

EDINBURGH TRAM (LINE ONE) BILL COMMITTEE

Tuesday 14 March 2006

Session 2

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EDINBURGH TRAM (LINE ONE) BILL COMMITTEE

† 5th Meeting 2006, 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

CLERK TO THE COMMITTEE

Jane Sutherland

LOCATION

Committee Room 3

† 4th Meeting 2006, Session 2—held in private.

Scottish Parliament

Edinburgh Tram (Line One) Bill Committee

Tuesday 14 March 2006

[THE CONVENER *opened the meeting at 10:30*]

Edinburgh Tram (Line One) Bill: Consideration Stage

The Convener (Jackie Baillie): Good morning and welcome to the fifth and final meeting in 2006 of the Edinburgh Tram (Line One) Bill Committee. There is only one item on the agenda for today, when the committee will consider the bill at phase 2 of consideration stage.

During phase 2, the committee must consider and process all admissible amendments that have been lodged. The procedures that we will follow today are similar to those followed at stage 2 of a public bill, except that only members of the committee can lodge amendments to a private bill and participate in the meeting. For those who are unfamiliar with phase 2, I will briefly explain that, for a number of reasons, which I will outline shortly, the committee will consider 104 amendments that seek to change the bill. There is a range of reasons why those amendments have been lodged. Many of them will have arisen as a result of the committee's consideration stage report; others will be minor or technical amendments provided by the promoter but lodged on the promoter's behalf by a member of the committee. Some amendments will have arisen as a result of discussions that the clerks and the legal advisers held with the promoter on our behalf.

Given the overlap of the route between lines 1 and 2 at Haymarket, there may be amendments to the Edinburgh Tram (Line Two) Bill that have been agreed but which, for practical construction and operation purposes, it is also prudent to make to the Edinburgh Tram (Line One) Bill.

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

Section 1—Power to construct works

The Convener: We now move on to consideration of amendments. Amendment 1, in the name of Helen Eadie, is in a group on its own.

Helen Eadie (Dunfermline East) (Lab):

Amendment 1 clarifies a drafting error. The current phrasing in section 1(7)(a) suggests that the works must be within both the limits of deviation and the limits of land to be acquired or used. In reality, few of the works are likely to be within both areas, as they generally serve different purposes. The drafting should have specified that the works authorised by subsections (3) and (4) have to be carried out either within the limits of deviation or within the limits of land to be acquired or used. Amendment 1 makes that position clear.

I move amendment 1.

Amendment 1 agreed to.

Section 1, as amended, agreed to.

Schedule 1

SCHEDULED WORKS

The Convener: Amendment 2, in the name of Phil Gallie, is in a group on its own.

Phil Gallie (South of Scotland) (Con):

Amendment 2 puts into effect the undertaking given by the promoter to objectors in groups 34 and 45—the Roseburn corridor objectors and the friends of the Roseburn urban wildlife corridor—at the meeting on 27 September, when it was established during evidence taking that the bill used the term “cycletrack” only. Amendment 2 makes it clear that the Roseburn railway track from south of Ferry Road to Balbirnie Place, which is currently described only as a cycletrack but which is also extensively used as a walkway, will be referred to in the bill as a “combined walkway and cycletrack”. Realignment work will be required to preserve the existence of the cycletrack and walkway.

I move amendment 2.

Amendment 2 agreed to.

The Convener: Amendment 3, in the name of Phil Gallie, is grouped with amendments 4 to 7, 12 to 14, 18, 46 and 47.

Phil Gallie: During our scrutiny of the bill at the first phase of consideration stage, the committee agreed that the tram alignment should be amended in two areas of Edinburgh: at Haymarket Yards and at Ocean Terminal. In both cases, the committee agreed to the alignment change, as it was clear that the objectors and the promoter would prefer the new route over the route that is set out in the bill. The committee accepted that the bill would have to be amended as a consequence, because both the realignments will take the tram route outwith the limits of deviation.

The amendments in this group relate to the Haymarket Yards realignment and describe the technical changes that the promoter will have to

make to the route. In essence, the route will now use the reserved public transport corridor that is adjacent to the Edinburgh to Glasgow railway line and will then run on-road along Haymarket Yards to the proposed stop outside Rosebery House. That differs from the original alignment, which was to run behind CA House and Elgin House, before running in a segregated alignment through the Citypoint car park and exiting on to Haymarket Yards.

The amendments to schedule 1 describe fully the new route through the area. The amendments to schedules 2, 3, 4 and 7 are consequential on the change of route.

I move amendment 3.

Amendment 3 agreed to.

Amendments 4 and 5 moved—[Phil Gallie]—and agreed to.

Schedule 1, as amended, agreed to.

Sections 2 and 3 agreed to.

Schedule 2

ROADS SUBJECT TO ALTERATION OF LAYOUT

Amendments 6 and 7 moved—[Phil Gallie]—and agreed to.

Schedule 2, as amended, agreed to.

Section 4 agreed to.

Section 5—Power to execute road works

The Convener: Amendment 8, in the name of Rob Gibson, is grouped with amendment 9.

Rob Gibson (Highlands and Islands) (SNP): The first four sections provide for the authorised work to be undertaken, with section 4 authorising apparatus that is associated with the tram to be kept in or on the road. In addition to the authorised works, further road works may be required as a consequence of works under various other sections and the powers contained in those sections. However, those sections do not authorise the placing of apparatus in roads to enable construction. Therefore, section 5 is required to allow the authorised undertaker to carry out any road works that are required under the bill, subject to consents or authority from any other body with powers over a private road.

Amendments 8 and 9 arise from discussions that the clerks and the legal team held on our behalf with the promoter on the general drafting of the bill. As drafted, section 5(1) consists of an extremely long single sentence of more than 100 words, the precise meaning of which is difficult to understand. The revised version will be much more accessible and more in keeping with Scottish

drafting style. The promoter observed that a couple of specific powers that it would be helpful for it to have were inadvertently omitted from the bill—they can be found in the third and fourth new paragraphs that amendment 9 will insert in subsection (1). In other respects, the purpose of subsection (1) will be unchanged, but the promoter will have produced a drafting improvement.

I move amendment 8.

Amendment 8 agreed to.

Amendment 9 moved—[Rob Gibson]—and agreed to.

Section 5, as amended, agreed to.

Section 6—Permanent stopping up of roads

The Convener: Amendment 10, in the name of Helen Eadie, is grouped with amendment 11.

Helen Eadie: During construction of the tramline, it is inevitable that there will be some disruption for road users. Provision is made for that at section 6. Section 6(2)(b) states that, where certain named roads are being “stopped up”—in other words, where the public right to use the road is cancelled—a temporary alternative route must be provided and maintained until a new road is complete. Amendment 10 will ensure that, in such cases, such a temporary alternative route must be provided and maintained until the new road is both complete and open.

As the bill is drafted, there is a doubt as to whether it is necessary for all or most of the conditions in subsection (4) to be met—some of which are mutually exclusive—before a road can be stopped up. The amendment to subsection (3), amendment 11, makes clear the intention behind the original drafting, which is that only one of the conditions that are set out in subsection (4) needs to be satisfied.

I move amendment 10.

Amendment 10 agreed to.

Amendment 11 moved—[Helen Eadie]—and agreed to.

Section 6, as amended, agreed to.

Schedule 3

ROADS TO BE PERMANENTLY STOPPED UP

Amendments 12 to 14 moved—[Phil Gallie]—and agreed to.

Schedule 3, as amended, agreed to.

Section 7—Temporary stopping up of roads

The Convener: Amendment 15, in the name of Phil Gallie, is grouped with amendment 16.

Phil Gallie: Amendments 15 and 16 are drafting amendments. They are intended solely to make section 7 more comprehensible by reducing the length of the text. The amendments do not affect the intent, purpose or effect of the section.

I move amendment 15.

Amendment 15 agreed to.

Amendment 16 moved—[Phil Gallie]—and agreed to.

The Convener: Amendment 17, in the name of Rob Gibson, is the only amendment in its group.

Rob Gibson: The bill currently provides that a person who suffers loss from a permanent extinguishment of a private right of way is entitled to compensation under the Land Compensation (Scotland) Act 1963. Amendment 17 will ensure that a person who suffers loss from the temporary suspension of a private right of way will also be entitled to compensation. In short, the committee is ensuring that people who suffer such a loss are treated on an equal basis.

I move amendment 17.

Amendment 17 agreed to.

Section 7, as amended, agreed to.

Schedule 4

ROADS TO BE TEMPORARILY STOPPED UP

Amendment 18 moved—[Phil Gallie]—and agreed to.

Schedule 4, as amended, agreed to.

Section 8—Access to works

The Convener: Amendment 19, in the name of Helen Eadie, is grouped with amendments 38 and 39.

Helen Eadie: The amendments rectify drafting errors. The works that are authorised under the bill are referred to as “authorised works”. However, they are erroneously referred to in three instances as “scheduled works”. The amendments ensure that the drafting reflects the intended meaning of the relevant subsections of sections 8 and 22.

I move amendment 19.

Amendment 19 agreed to.

Section 8, as amended, agreed to.

Sections 9 to 12 agreed to.

Section 13—Agreements with Network Rail and the Strategic Rail Authority

The Convener: Amendment 20, in the name of Rob Gibson, is grouped with amendments 21 and 22.

Rob Gibson: At our meeting of 21 June 2005, the committee considered evidence on an objection that was lodged by BRB (Residuary) Ltd. In evidence, the promoter and BRBR indicated that, on the basis of certain amendments being made, BRBR would be willing to withdraw its objection. The amendments reflect the fact that, since the bill was introduced, the Strategic Rail Authority’s powers have been transferred. Given that the title to any land to which section 13 refers will now be held by BRB (Residuary) Ltd, rather than the Strategic Rail Authority, the section should be amended to refer to BRBR.

I move amendment 20.

Amendment 20 agreed to.

Amendments 21 and 22 moved—[Rob Gibson]—and agreed to.

Section 13, as amended, agreed to.

Schedule 5 agreed to.

After section 13

10:45

The Convener: Amendment 23, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: There are likely to be historical statutory obligations on BRB (Residuary) Ltd as the successor body of the original railway companies that subsist notwithstanding the closure of the former railways. Amendment 23 transfers the responsibility for obligations applicable to any part of a former railway that falls within the limits of deviation to the authorised undertaker, from the date on which the bill comes into force. The terms of the amendment were agreed between the promoter and BRB (Residuary) Ltd.

I move amendment 23.

Amendment 23 agreed to.

Section 14 agreed to.

Section 15—Attachment of equipment to buildings for purposes of works

The Convener: Amendment 24, in the name of Rob Gibson, is grouped with amendments 25 and 26.

Rob Gibson: The amendment to replace sections 15(2) and 15(3) and the other amendments to section 15 are further changes that are a consequence of the discussions held on our behalf with the promoter. Generally speaking, section 15 provides the authorised undertaker with the power to attach any necessary equipment to any building. As drafted, subsection (3) requires a person who wishes to object to fixings being

placed on their building to refer the matter by summary application to the sheriff.

The amendment to subsections (2) and (3) requires that the authorised undertaker must obtain consent from the owner before carrying out any such work. Only where consent is refused or is granted subject to unreasonable conditions can the authorised undertaker refer the matter to the sheriff to determine. Thus, amendment 24 transfers the onus to take matters to court on to the authorised undertaker, which is fairer and more appropriate.

The tram system will involve overhead wires that transmit electricity to the vehicles and, generally speaking, section 15 allows wires and other equipment to be attached to neighbouring buildings rather than fixed to poles in the road. Subsection (4) enables the owner of the building to require the authorised undertaker to remove the attachment, at the undertaker's expense, to allow them to reconstruct or repair the building, provided that at least 28 days' notice is given. The amendment to subsection (4) is simply a plain-English rewrite and does not affect the effect, purpose or intent of the section.

The purpose of the amendment to subsection (6) is to simplify it and to reflect the practicalities of property law in Scotland. The amendment will mean that where, under section 15, the authorised undertaker proposes to attach equipment to buildings for the purposes of the works, notice must be given to the owner of the building. As drafted, the subsection enables notice to be given only to the occupier of the building in some circumstances. The amendment will offer more protection to the owners of buildings. As the subsection is drafted, notification could have been served on the tenant only and the owner might have been unaware of the situation and therefore unable to challenge the notice.

I move amendment 24.

Amendment 24 agreed to.

Amendments 25 and 26 moved—[Rob Gibson]—and agreed to.

Section 15, as amended, agreed to.

Section 16—Discharge of water

The Convener: Amendment 27, in the name of Helen Eadie, is grouped with amendments 28 to 35.

Helen Eadie: Amendments 27 to 35 arise from discussions that the clerks and legal advisers held with the promoter on the committee's behalf. They will improve the drafting of section 16 by replacing references to the "authority" that owns sewers or drains with "person", to recognise the existence of non-statutory owners who have rights over water

that flows past their land. The deletion of subsection (5) and the amendments to subsections (2) and (4) reflect the imminent repeal of section 30F of the Control of Pollution Act 1974 and the obligation on the authorised undertaker to comply with the general law on discharges to watercourses. The Scottish Environment Protection Agency and Scottish Water were involved in discussions that led to the lodging of the amendments.

I move amendment 27.

Amendment 27 agreed to.

Amendments 28 to 35 moved—[Helen Eadie]—and agreed to.

Section 16, as amended, agreed to.

Section 17—Safeguarding works to buildings

The Convener: Amendment 36, in the name of Phil Gallie, is in a group on its own.

Phil Gallie: Section 17 provides for safeguarding works if the installation, operation or maintenance of the tram works might threaten or damage buildings that lie within the limits of deviation. The definition of "safeguarding works" is set out in subsection (11) and includes, in paragraph (c),

"any works the purpose of which is to secure the safe operation of the authorised works or to prevent or minimise the risk of such operation being disrupted."

Amendment 36 will delete paragraph (c) and thereby remove a definition that, on closer inspection, goes beyond what is usually considered to be safeguarding works, given that it relates to works that have nothing to do with the building in question. That is considered inappropriate, given that section 17 provides powers to enter and survey buildings. For the avoidance of doubt, I stress that amendment 36 will in no way undermine the obligation on the authorised undertaker to secure the safe operation of the authorised works.

I move amendment 36.

Amendment 36 agreed to.

Section 17, as amended, agreed to.

Section 18—Power to construct temporary tramways

The Convener: Amendment 37, in the name of Phil Gallie, is in a group on its own.

Phil Gallie: Section 18 gives power to the authorised undertaker to divert the tram on to a temporary tramway if that is "necessary or expedient" because of road works on the road on which the tramway is laid. The road works need not be connected with the tram. The power to

divert is essential to ensure the continuing operation of the tram as far as is practicable.

Amendment 37 follows discussions that the clerks and legal advisers held with the promoter on the committee's behalf. Given the inconvenience that would arise from the use of the power, the committee was concerned about the use of the power on the ground of expediency. Amendment 37 will delete the words "or expedient" and reflects the promoter's acceptance that the authorised undertaker will divert the tram only when that is necessary in consequence of road works that are being executed along the road on which the tram normally runs. As soon as the interfering road works are completed, the power to divert will no longer exist and the tram must return to the promoted route. Amendment 37 should ensure that disruption to people by a diversion is kept to a minimum.

I move amendment 37.

Amendment 37 agreed to.

Section 18, as amended, agreed to.

Sections 19 to 21 agreed to.

Section 22—Power to acquire land

Amendments 38 and 39 moved—[Helen Eadie]—and agreed to.

Section 22, as amended, agreed to.

Schedule 6

ACQUISITION OF CERTAIN LAND

The Convener: Amendment 40, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: Amendment 40 seeks to put into effect the undertaking that the promoter gave to group 30 objectors, including Newhaven community council. It removes plots 90 and 90a—the land and garden adjacent to Victoria primary school—from schedule 6. Removing those references means that the bill will no longer provide the promoter with the power to acquire that land and will give comfort to the objectors from group 30.

I move amendment 40.

Amendment 40 agreed to.

Schedule 6, as amended, agreed to.

Section 23—Powers to acquire new rights

The Convener: Amendment 41, in the name of Helen Eadie, is in a group on its own.

Helen Eadie: Section 23 gives the authorised undertaker the power to acquire rights over land that may otherwise be compulsorily acquired. In

other words, the authorised undertaker will not own the land afterwards but will just have a certain right over it, such as the right to enter the land to maintain the tramway. Amendment 41 provides clarification, by making it clear that the power to acquire rights may be either by acquiring rights that are already in existence or by creating rights anew.

I move amendment 41.

Amendment 41 agreed to.

Section 23, as amended, agreed to.

Section 24—Rights under or over roads

The Convener: Amendment 42, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: Amendment 42 relates to section 24(5), which is a technical section, and it provides simplification and clearer drafting. The overall effect, purpose and intent of the section are unchanged.

I move amendment 42.

Amendment 42 agreed to.

Section 24, as amended, agreed to.

Section 25—Temporary use of land for construction of works

The Convener: Amendment 43, in the name of Helen Eadie, is grouped with amendment 48.

Helen Eadie: The amendments seek to remove some unnecessary words from sections 25(7) and 26(8). As drafted, the sections make it clear that their application does not restrict the application of section 37, which is concerned with ensuring that compensation cannot be paid twice for the same loss. However, it is clear that section 37 stands on its own. Its application is wider than sections 25(7) and 26(8) and the words being deleted are therefore superfluous. They add nothing to the effect of this provision and so should be removed.

I move amendment 43.

Amendment 43 agreed to.

Section 25, as amended, agreed to.

Schedule 7

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

The Convener: Amendment 44, in the name of Helen Eadie, is in a group on its own.

Helen Eadie: Amendment 44 enforces the terms of an undertaking that the promoter gave to the Edinburgh Masonic Club. Together with a consequential amendment to the parliamentary plans, it will remove the plot of land at the junction of Shrub Place Lane and Leith Walk from within

the limits of deviation for permanent acquisition and place it on the list of plots of land of which temporary possession may be taken. That should ensure that there is almost continuous access to the objector's premises in Shrub Place Lane.

I move amendment 44.

Amendment 44 agreed to.

The Convener: Amendment 45, in the name of Phil Gallie, is in a group on its own.

Phil Gallie: Members will recall that witnesses gave an undertaking to the committee and group 35 objectors that the promoter would address specific concerns about the permanent acquisition of plots 236 and 238, which are located near to Coltbridge Terrace. Paragraph 469 of the consideration stage report says that the committee will ensure

"that these undertakings are binding on the authorised undertaker."

Amendment 45, together with a consequential amendment to the parliamentary plans, removes the plots of land from within the limits of deviation for permanent acquisition and places them on the list of plots of land of which temporary possession may be taken. The amendment should therefore address objector concerns.

I move amendment 45.

Amendment 45 agreed to.

Amendments 46 and 47 moved—[Phil Gallie]—and agreed to.

Schedule 7, as amended, agreed to.

11:00

Section 26—Temporary use of land for maintenance of works

Amendment 48 moved—[Helen Eadie]—and agreed to.

Section 26, as amended, agreed to.

Section 27 agreed to.

Section 28—Power to retain, sell, etc., lands

The Convener: Amendment 49, in the name of Helen Eadie, is grouped with amendments 54, 88 and 89.

Helen Eadie: The amendments are a necessary consequence of changes that will be made to the general law after the bill's enactment. In particular, the feudal system of land tenure in Scotland has now been abolished, so all references in the bill to the creation of feus and the payment of feu duties and ground annuals are redundant. The

amendments are consequential, tidying-up amendments.

I move amendment 49.

Amendment 49 agreed to.

The Convener: Amendment 50, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: The purpose of amendment 50 is to delete an unnecessary subsection. Section 28(2) currently restricts the use of any capital sums that the authorised undertaker raises by selling land that it acquires under the bill but which it ultimately does not require for the scheme. However, it was noted that the City of Edinburgh Council—the current authorised undertaker—already has such a general duty to account for incoming funds, whether capital or revenue. In the event that the statutory undertaker were to change, the subsection would also be irrelevant because any such undertaker will not be a local authority and could well be inconsistent with its articles of association as well as with accounting policies. The practice in subsection (2) is meaningless other than to a local authority, and a local authority is already required to apply capital in the way that is set out in the subsection.

I move amendment 50.

Amendment 50 agreed to.

Section 28, as amended, agreed to.

After section 28

The Convener: Amendment 51, in the name of Phil Gallie, is the only amendment in the group.

Phil Gallie: The committee heard evidence from objectors on the general issue of whether the promoter would be required to return land that had been compulsorily acquired in the event of that land's being no longer necessary for the scheme. The Crichton Down rules set out the circumstances in which surplus Government land that has been acquired compulsorily should, as a matter of good practice, be offered back to its former owners. The committee is satisfied that those rules should be binding on the authorised undertaker in respect of land that has been compulsorily acquired under the bill. The effect is that, if such land or part of it is no longer required by the authorised undertaker for the scheme, the authorised undertaker will be obliged to offer the land back to the person from whom it was acquired. Amendment 51 will ensure that the Crichton Down rules are incorporated and applied by the authorised undertaker or its successor.

I move amendment 51.

Amendment 51 agreed to.

Sections 29 and 30 agreed to.

Section 31—Set-off against betterment

The Convener: Amendment 52, in the name of Phil Gallie, is grouped with amendments 53 and 100.

Phil Gallie: The amendment to section 77—amendment 100—will ensure that the bill incorporates section 6 of the Railway Clauses (Consolidation) (Scotland) Act 1845. That will enable compensation to be paid for any reduction in property value that arises from construction works, in line with the recommendation in paragraph 71 of the committee's consideration stage report.

The promoter has suggested that there will need to be consequential amendments to section 31. Section 31 provides that if, in addition to land that is acquired under the bill, a landowner has other contiguous or adjacent land that increases in value because of the bill—through its being more accessible, for example—compensation for the lost land will be reduced by the amount of any increase in the value of the other land. That principle is known as betterment.

In the same way that the effect of betterment will be taken into account in compensation that is payable in respect of land that is acquired under the bill, the amendments propose that the effect of betterment be taken into account in the compensation that will be payable as a result of a diminution in property values because of construction works.

I move amendment 52.

Amendment 52 agreed to.

Amendment 53 moved—[Phil Gallie]—and agreed to.

Section 31, as amended, agreed to.

Section 32 agreed to.

Section 33—Persons under a disability may grant servitudes, etc.

Amendment 54 moved—[Helen Eadie]—and agreed to.

Section 33, as amended, agreed to.

Sections 34 and 35 agreed to.

Section 36—Correction of errors in Parliamentary plans and book of reference

The Convener: Amendment 55, in the name of Rob Gibson, is grouped with amendment 56.

Rob Gibson: At the meeting on 25 October, the committee raised concerns about the provisions in section 36. One concern is about fairness to other parties whose rights are the subject of omission from, or error in, the documents by the promoter.

If the parliamentary plans or the book of reference, which were submitted by the promoter along with the bill, are inaccurate in their description of any land or in their statement or description of the ownership or occupation of any land, section 36 will allow the authorised undertaker to apply to the sheriff for correction of the inaccuracy. The authorised undertaker is required first to give at least 10 days' notice to the owner or occupier of the land that is the subject of the error.

If the sheriff agrees that the inaccuracy arose by mistake, the sheriff must certify that fact accordingly. It would then be lawful for the authorised undertaker to take the land—or, as the case may be, a right over the land in question—and carry out the works in accordance with the certificate.

The reason for concern about the section is that it would give the authorised undertaker fairly wide powers to take land from an individual without that individual enjoying the same rights as the people who objected to the bill. It would be possible for the promoter to take such land, or to take a right over the land, even where the promoter had made a mistake.

The committee appreciates that a mechanism is needed whereby the promoter can correct errors; otherwise, we could end up in the worst-case scenario in which the promoter is unable to operate the tram because it does not have the required land.

Promoter response 11C clarified that it was only ever intended that the power would be used to make corrections to identified land that falls within the bill's current limits of deviation or within the limits of land to be acquired or used. The committee is not convinced that the power should be so wide.

Amendment 56 will restrict the scope of application to the sheriff to instances of purely clerical or similar errors for land that is currently identified. The committee commends the promoter for making the scope of the power clearer.

The amendment to section 36(3) is a minor tidying-up one that will ensure that copies of certificates relating to any amendments that are approved by the sheriff to correct inaccuracies in the book of reference are also sent to the partner libraries that hold copies of the original book of reference.

I move amendment 55.

Amendment 55 agreed to.

Amendment 56 moved—[Rob Gibson]—and agreed to.

Section 36, as amended, agreed to.

Sections 37 and 38 agreed to.

Section 39—Extension of time

The Convener: Amendment 57, in the name of Phil Gallie, is grouped with amendment 95.

Phil Gallie: Section 39 would, as drafted, confer on the Scottish ministers a power to extend for an unlimited period the period within which the authorised undertaker can exercise the compulsory acquisition powers that the bill will confer. At present, that period is fixed at five years. The Subordinate Legislation Committee, after considering the order-making powers in section 39, recommended that, given the open-ended nature of the power, the procedure for consideration of any such order should be the affirmative procedure, which requires that Parliament approve the order.

The committee has gone a step further than that. As noted in our consideration stage report, we are not persuaded that the compulsory purchase powers should be unrestricted in time, given the general uncertainty that that would create about when and whether the powers will be used. Amendment 57 will therefore ensure that the powers must be exercised, at the latest, within 10 years of the bill's coming into force. In addition, amendment 57 will require any extension of the period from five years, or any further extended period, to be granted before the period that is in force at the time expires. Both changes will give greater certainty to affected landowners.

Given that amendment 57 will specify a maximum period in the bill, it has been informally agreed with members of the Subordinate Legislation Committee that it is no longer necessary to make orders under section 39 subject to the affirmative procedure.

Amendment 95, which will amend section 70, is consequential and reflects the fact that there might be a requirement for a further period from the initiation of acquisition powers to the commencement of work on a piece of land. In such cases, it will be necessary for the provisions on permitted development to continue to apply for an additional period.

I move amendment 57.

Amendment 57 agreed to.

Section 39, as amended, agreed to.

Sections 40 to 42 agreed to.

Section 43—Penalty fares

The Convener: Amendment 58, in the name of Phil Gallie, is grouped with amendments 59 to 66.

Phil Gallie: The amendments to section 43(2) are technical and reflect the role of the authorised persons—ticket inspectors—in checking that

tickets have been validated for use before passengers travel. As a consequence, section 43(8), which defines the phrase “the required imprint”, is no longer necessary.

The amendments to subsections (6) and (7) will improve the drafting by making it clear that, in any court action for the recovery of a penalty fare, the passenger will be the defender and the authorised undertaker will be the pursuer. In particular, the use of the term “passenger” rather than “defender” in subsections (6) and (7) will be consistent with the terminology in the remainder of section 43.

I move amendment 58.

Amendment 58 agreed to.

Amendments 59 to 66 moved—[Phil Gallie]—and agreed to.

Section 43, as amended, agreed to.

Section 44—Amount of penalty fare

11:15

The Convener: Amendment 67, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: Amendment 67 has been lodged on behalf of the promoter. The drafting of section 44 would require the promoter, in certain circumstances, to establish the full single fare that a non-paying passenger would have been liable to pay in order to calculate the penalty for non-payment. That is an unnecessary requirement, so the amendment, which proposes the use of the maximum single adult cash fare, will simplify the calculation of any penalty, which will be a multiple of that figure. The amendment also covers a passenger's liability to pay a penalty fare, and will set that penalty at 25 times the maximum single adult cash fare.

Members will note that that is quite a large increase in the proposed amount of the fine compared with the original provision. However, the promoter argues that the figure will set a visible deterrent to fare dodging, and that anybody who is subject to a penalty fine has only themselves to blame for attempting to avoid payment in the first instance. The level of the penalty will also ensure that the administration costs of imposing and collecting are covered by the penalty fare.

Given that the maximum single adult cash fare will increase by the rate of inflation, there is no need for Scottish ministers to be able to increase the amount of the penalty fare, as section 44(3) currently provides for. The promoter therefore seeks to delete subsection (3).

I move amendment 67.

Amendment 67 agreed to.

Section 44, as amended, agreed to.

Section 45 agreed to.

Section 46—Notice of penalty fare provisions

The Convener: Amendment 68, in the name of Helen Eadie, is in a group on its own.

Helen Eadie: Amendment 68 is a very minor amendment that will modernise the language of section 46. I move amendment 68.

Amendment 68 agreed to.

Section 46, as amended, agreed to.

Sections 47 to 52 agreed to.

Section 53—Obstruction to operation

The Convener: Amendment 69, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: Section 53 creates the offence of deliberately obstructing the operation of the tram. Section 53(2) requires the obstruction to be removed and, if that is not done by the obstructing person, allows the authorised undertaker to remove it. As drafted, subsection (2) would require the authorised undertaker—before it can remove any obstruction that has been placed on the system—to request that the person who placed the obstruction remove it. Only if they have failed to do that would the authorised undertaker be able to take action to remove the obstruction. The amendment will ensure that the promoter has the power to remove any obstruction immediately, thereby minimising any adverse impact on the running of the tram.

I move amendment 69.

Amendment 69 agreed to.

The Convener: Amendment 70, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: Section 53 creates the offence of deliberately obstructing the operation of the tram. The section also states what the authorised undertaker can do with any obstruction that it removes under the section, if it is not removed by the obstructing person.

As the bill is drafted, one of the grounds on which the authorised undertaker can decide to sell or get rid of such an obstruction is the fact that the authorised undertaker thinks that it is inconvenient to keep the item. Following discussions, the promoter has accepted that it might be relatively easy for the authorised undertaker to claim that it was inconvenient to hold on to any object that it had removed and that it could therefore quickly dispose of such an object under section 53(5).

Amendment 70 will ensure that the authorised undertaker can no longer get rid of or sell an item

on the ground of inconvenience. The amendment will restrict the circumstances in which the authorised undertaker can dispose of an object to those in which the holding of the object involves unreasonable expense or in which the object is perishable. The amendment seeks to achieve the right balance between the rights of the third party and the burden on the authorised undertaker.

I move amendment 70.

Amendment 70 agreed to.

Section 53, as amended, agreed to.

Sections 54 to 58 agreed to.

Section 59—Power to make byelaws

The Convener: Amendment 71, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: In paragraph 138 of the consideration stage report, the committee agreed to amend the bill to make specific the power to make the byelaw that is described in amendment 71.

Section 59 is concerned with the power of the authorised undertaker to make byelaws in connection with the tramway. It provides a non-exhaustive list of subjects that byelaws could cover. The promoter feels that, despite the list's being non-exhaustive, it will be helpful to include in section 59(2) a further example of a byelaw. The example in amendment 71 will enable byelaws to address how residents and property owners whose properties are in close proximity to the tram can maintain their property; for example, by providing that if a property owner currently washes their windows using a metal-handled brush, in the future they may, for reasons of safety, be required to use a wooden-handled brush. Shocking!

The authorised undertaker has indicated that it will produce a policy that sets out how residents or property owners whose properties are in close proximity to the tram can maintain their property. A draft is currently available on the tramtime website.

I move amendment 71.

Amendment 71 agreed to.

The Convener: Amendment 72, in the name of Rob Gibson, is grouped with amendment 73.

Rob Gibson: Under section 59, the authorised undertaker can make byelaws to regulate specified matters concerned with the operation of the tram. Notwithstanding that the byelaws might create criminal offences, subsection (4) will permit the authorised undertaker to take immediate action to avoid danger or annoyance to the public or to avoid the operation of the tram being hindered. In other words, the undertaker can remove people and things from the tramway.

As I have just said, one of the grounds for taking action is that of annoyance. However, there was a concern that the word “annoyance” could be interpreted subjectively by the authorised undertaker and that the power could therefore become wide-ranging. Amendments 72 and 73 will delete the word “annoyance” where it appears in section 59(4), thereby limiting the scope of the application of the section and restricting the power of the authorised undertaker.

I move amendment 72.

Amendment 72 agreed to.

Amendment 73 moved—[Rob Gibson]—and agreed to.

The Convener: Amendment 74, in the name of Rob Gibson, is grouped with amendment 75.

Rob Gibson: When the authorised undertaker makes byelaws, it will be required that those byelaws be confirmed by Scottish ministers. Given the impact of such byelaws on members of the public, amendments 74 and 75 seek to clarify how the public will be made aware of them.

In practical terms, amendment 74 will mean that, once byelaws have been confirmed by Scottish ministers, the authorised undertaker will be required to publish the byelaws in two successive weeks in local newspapers, stating the general effect of each byelaw and when it will come into operation. Section 59(11) requires that a copy of the byelaws be made available for public inspection at the authorised undertaker’s principal office.

To improve accessibility, it was suggested to the promoter that it would be advantageous to go a little further and to publish copies on the authorised undertaker’s website. The promoter has accepted that suggestion; amendment 75 should make the content of byelaws more accessible for the public.

Amendments 74 and 75 will, therefore, impose further obligations on the authorised undertaker. That will be of benefit to third parties by ensuring that relevant information on byelaws is more readily available to them.

I move amendment 74.

Amendment 74 agreed to.

Amendment 75 moved—[Rob Gibson]—and agreed to.

Section 59, as amended, agreed to.

Section 60—Power to contract for police services

The Convener: Amendment 76, in the name of Rob Gibson, is grouped with amendments 77 to 82.

Rob Gibson: Since the Edinburgh Tram (Line One) Bill was introduced, the Railways and Transport Safety Act 2003 has come into force. That act has created an independent police authority for the British Transport Police; transferred responsibility for the British Transport Police from the Strategic Rail Authority to the new police authority; and given the British Transport Police a wholly statutory jurisdiction over railways.

The amendments in the group will ensure that the bill is consistent with the 2003 act, but will not substantively alter the effect, purpose or intent of section 60. Members will recollect that British Transport Police expressed its desire, prior to withdrawal of its objection, that the bill be amended to reflect changes in legislation. The amendments in the group take full account of that request. Unless members want specific information on each of the amendments, I do not propose to say anything further.

I move amendment 76.

Amendment 76 agreed to.

Amendments 77 to 82 moved—[Rob Gibson]—and agreed to.

Section 60, as amended, agreed to.

Section 61—Insulation against noise

The Convener: Amendment 83, in the name of Phil Gallie, is in a group on its own.

Phil Gallie: This is a minor amendment to the drafting to ensure that advertising of the making of the required noise insulation scheme takes place as soon as possible after the making of the scheme.

I move amendment 83.

Amendment 83 agreed to.

Section 61, as amended, agreed to.

Section 62 agreed to.

Section 63—Repeal of sections 61 and 62

The Convener: Amendment 84, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: Section 63 allows Scottish ministers to repeal by order—in certain circumstances—sections 61 and 62, which are concerned with noise insulation schemes.

Section 63(2) sets out the kind of provisions that any such order may contain. However, section 79 contains a more general power to include such provisions in any order made under the bill. Section 63(2) is therefore unnecessary, as the power that it contains is already covered in the general power available under section 79(2).

I move amendment 84.

Amendment 84 agreed to.

Section 63, as amended, agreed to.

After section 63

The Convener: Amendment 85, in the name of Phil Gallie, is in a group on its own.

Phil Gallie: At the committee's meetings on 3 October and 8 November, it heard extensive evidence on noise and vibration from the promoter and from objectors' witnesses. The committee also considered the promoter's approach to controlling noise and vibration, which is set out in the code of construction practice and in the noise and vibration policy. As a consequence of the evidence presented, the committee has agreed to amend the bill so that it refers to the code of construction practice and the noise and vibration policy.

The committee broadly welcomed the commitments made by the promoter in those documents, but it felt that it was important that the proposed measures should be given statutory backing. We agreed that it was important to reassure objectors that the standards of mitigation set out in the COCP, the NVP and subsequent local construction plans will be applied by contractors. In addition, the committee agreed that it was important that any subsequent revisions of the COCP and NVP should not reduce the standards of mitigation detailed in the March 2006 versions of those documents.

We therefore stated our intention to amend the bill to ensure that those standards, at the very least, are met by the authorised undertaker and contractors. The committee agrees that the amendments will address a number of concerns raised by objectors—particularly the Roseburn railway corridor objectors. In particular, the evidence that the committee received persuaded it to restrict Saturday working hours of construction to 8 am to 1 pm, to balance the impact of construction on adjacent properties with the need to construct the tramline as quickly as possible. Construction may occur outwith the working hours specified in the COCP only with the prior agreement of the City of Edinburgh Council.

11:30

The committee is pleased to note that, as a result of its concerns, the COCP and NVP were revised to include direct obligations on the City of Edinburgh Council in relation to monitoring and enforcement. The additional safeguards should allay objectors' concerns about compliance with and enforcement of the COCP and NVP.

Amendment 85 satisfies the committee's requirement that the standards that are set out in the COCP, the NVP and local construction plans

be met. Policy and practice will be set out in a "plump and plain" manner—to use the words of one objector. Amendment 85 will provide comfort to objectors that mitigation will, where promised, be carried out.

I move amendment 85.

Amendment 85 agreed to.

The Convener: Amendment 86, in the name of Helen Eadie, is in a group on its own.

Helen Eadie: Amendment 86, which the promoter produced for us, meets the requirements of the committee that are set out in paragraph 66 of its consideration stage report. In effect, the amendment is in two parts.

After considering the evidence, the committee agreed that it was imperative that the environmental impact of the tram should be no worse than the residual impact identified in the environmental statement that was produced with the bill. If impacts can be mitigated, we expect that to happen. Amendment 86 makes it clear that, as a minimum, the design, building and operation of the scheme must meet the standards that are set out in the environmental statement.

Amendment 86 will allow the promoter flexibility in meeting those standards and should enable the benefits of good design and developing practices to be incorporated. For example, if technological advances result in trams that are quieter than was anticipated in the environmental statement and the noise levels of the quieter trams are equivalent to the levels that would otherwise have had to be achieved through noise mitigation measures, the authorised undertaker will not be obliged to institute the noise mitigation measures.

The second part of amendment 86 will ensure that the standards embodied in specific pledges that the promoter made to objectors and the committee will be met, either through the provision of proposed mitigation measures or through the meeting of the standard of protection that was envisaged in the pledge. Again, there will be the flexibility to take account of technological advances. For example, if the promoter agreed to provide a noise barrier to reduce noise to an acceptable level for a particular objector, but the use of a quieter tram reduces noise to the agreed level, the authorised undertaker will not be obliged to provide the barrier. I hope that the inclusion of those provisions in the bill will give comfort to people who expressed a degree of cynicism about the promoter's intention to deliver what it promised. The promoter will have no choice but to deliver.

I move amendment 86.

Amendment 86 agreed to.

The Convener: Amendment 87, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: Amendment 87, which the promoter produced for us, will amend the bill to meet the requirements that the committee set out in the sections of its consideration stage report that deal with flora and fauna and health and safety in the Roseburn railway corridor.

The Roseburn railway corridor is a designated urban wildlife site, and we are determined that the environmental impacts of the tram be mitigated as far as possible. Although we accept that the exact effects cannot be identified until detailed final designs are prepared, we agree with objectors that mitigation is paramount. The landscape and habitat management plan that the promoter produced is a helpful starting point in considering mitigation.

Amendment 87 not only sets minimum standards of mitigation that must be achieved but gives details of who should be consulted. The amendment also establishes minimum standards that must be met in any subsequent version of the LHMP and ensures that those standards are enforceable. In particular, the amendment requires the promoter to consult Scottish Natural Heritage and the emergency services in the evolution of the LHMP. We expect that once final designs are available, it will be necessary further to revise the LHMP. A multi-agency approach, together with the required involvement of residents, will ensure that landscape and habitat issues are treated sympathetically.

Amendment 87 ensures that other aspects of construction and operation along the Roseburn railway corridor, such as emergency access, security and drainage, are incorporated into any decisions regarding changes to the LHMP. That will enable those aspects to be considered, along with any changes to the Roseburn corridor landscape and habitat, and ensures, to quote a witness from the consideration stage, that

"An appropriate...fit will be achieved by addressing the existing volume of space in a holistic way".

I move amendment 87.

Amendment 87 agreed to.

Section 64—Powers of disposal, agreements for operation, etc

Amendments 88 and 89 moved—[Helen Eadie]—and agreed to.

The Convener: Amendment 90, in the name of Phil Gallie, is in a group on its own.

Phil Gallie: Amendment 90 was produced following discussions between the promoter, the clerks and the legal staff on behalf of the

committee. Section 64 is an open-ended power allowing the council, as the authorised undertaker, to enter into an agreement with any organisation to carry out the provisions of the bill. In other words, it may pass on or subcontract the construction, operation or maintenance of the tram or any other powers contained in the bill.

The amendment increases openness by requiring that the Scottish ministers are notified, within 21 days of any transfer, of the details of those with the new responsibilities and rights. That should ensure that in relation to, for example, an enforcement issue, it is clear who is liable or responsible.

I move amendment 90.

Amendment 90 agreed to.

Section 64, as amended, agreed to.

Sections 65 to 67 agreed to.

Section 68—Listed buildings and conservation areas

The Convener: Amendment 91, in the name of Helen Eadie, is grouped with amendment 92.

Helen Eadie: These are very minor drafting amendments, which seek to add the words "of this subsection" to sections 68(2)(c) and 68(2)(d). They will simply help to clarify that paragraphs (c) and (d) refer to provisions contained in the bill.

I move amendment 91.

Amendment 91 agreed to.

Amendment 92 moved—[Helen Eadie]—and agreed to.

The Convener: Amendment 93, in the name of Helen Eadie, is in a group on its own.

Helen Eadie: Section 68 is concerned with listed buildings and conservation areas, but does not define the term "conservation area". Amendment 93 provides such a definition by reference to the legislation under which conservation areas were created, thereby improving the clarity of the drafting.

I move amendment 93.

Amendment 93 agreed to.

Section 68, as amended, agreed to.

Schedule 10 agreed to.

Section 69—Ancient monuments

The Convener: Amendment 94, in the name of Phil Gallie, is in a group on its own.

Phil Gallie: Amendment 94 seeks to delete section 69 in its entirety. As drafted, section 69 disappplies section 2 of the Ancient Monuments

and Archaeological Areas Act 1979, which makes it a criminal offence to do works to a scheduled monument without consent.

By way of background, members will recall that section 69 was raised as an issue in the committee's preliminary stage report. The committee recommended that the promoter discuss the section with Historic Scotland, which had argued that it was unnecessary. During consideration stage, the promoter agreed to seek to remove section 69, which was a factor in Historic Scotland subsequently withdrawing its objection to the bill. The committee agreed in its consideration stage report that it would make the necessary amendment to the bill.

In legislative terms, deleting section 69 will mean that the authorised undertaker will now be required to obtain consent under the 1979 act for works under the bill that impact on scheduled ancient monuments. Further, because section 69 sought to disapply various provisions of the 1979 act, deletion of section 69 will mean that those sections will now apply to works authorised under the bill. In reality, however, the surveys carried out by the promoter for the environmental statement suggest that none of the works will impact on any scheduled ancient monuments. Therefore, amendment 94 may well have no real, practical implications, but it is worth while.

I move amendment 94.

Amendment 94 agreed to.

Section 70—Town and country planning, etc

Amendment 95 moved—[Phil Gallie]—and agreed to.

The Convener: Amendment 96, in the name of Helen Eadie, is in a group on its own.

Helen Eadie: This amendment to section 70(4) makes it clear that tram stops will be subject to the prior approval of the planning authority. The amendment avoids any doubt and gives third parties comfort and certainty that the local authority will look at the final design of tram stops.

I move amendment 96.

Amendment 96 agreed to.

The Convener: Amendment 97, in the name of Phil Gallie, is in a group on its own.

Phil Gallie: As always, I am being slightly different. I propose not to move amendment 97 because, on reflection, I believe that section 70(6) provides useful clarification that the Parliament is the competent authority as regards appropriate assessments carried out under the Conservation (Natural Habitats, etc) Regulations 1994 (SI 1994/2716). The committee has reported its

findings on the regulations to the Parliament in the report entitled "Appropriate Assessment on Firth of Forth Special Protection Area".

Amendment 97 not moved.

Section 70, as amended, agreed to.

Sections 71 and 72 agreed to.

Section 73—Certification of plans, etc

The Convener: Amendment 98, in the name of Phil Gallie, is in a group on its own.

Phil Gallie: Section 73 states that, as soon as practicable after the bill is enacted, the authorised undertaker is to submit copies of the book of reference, the parliamentary plans and the parliamentary sections to Scottish ministers for certification—in other words, confirmation that they are the documents that they claim to be. Amendment 98 will ensure that the provisions of section 73 are more logical. Given that the clerk to the Scottish Parliament has the original book of reference, parliamentary plans and parliamentary sections, the clerk—and not Scottish ministers—should have responsibility for certifying those documents.

I move amendment 98.

Amendment 98 agreed to.

Section 73, as amended, agreed to.

Sections 74 and 75 agreed to.

Section 76—Arbitration

The Convener: Amendment 99, in the name of Phil Gallie, is in a group on its own.

11:45

Phil Gallie: Amendment 99 is another amendment that was lodged as a result of the committee asking the clerks and the legal advisers to scrutinise some of the technical aspects of the bill.

Section 76 sets out the procedure for when the authorised undertaker does not agree with the person or body from whom it is seeking consent or agreement or to whom it is giving consent, with the exception of cases in which the Lands Tribunal for Scotland or Scottish ministers are to resolve a dispute involving the authorised undertaker and another party.

In relevant cases where there is dispute, the parties can agree on an arbiter, or one will be appointed by the president of the Institution of Civil Engineers. However, amendment 99 also makes it clear that either party has the right to refer a dispute to an arbiter. The committee is therefore ensuring that the rights of parties to go to arbitration are clear.

I move amendment 99.

Amendment 99 agreed to.

Section 76, as amended, agreed to.

Section 77—Incorporation of enactments

Amendment 100 moved—[Phil Gallie]—and agreed to.

Section 77, as amended, agreed to.

Section 78—Interpretation

The Convener: Amendment 101, in the name of Phil Gallie, is grouped with amendments 102 and 103.

Phil Gallie: These technical amendments update the book of reference and the parliamentary plans and sections with changes to the route and restrictions on areas of land to be acquired by the promoter.

Because the limits of deviation are shown on the parliamentary plans and sections rather than in the bill, the committee is making the necessary amendments to the definitions of the book of reference and the parliamentary plans in section 78. These amendments are consequential to the route changes and are produced in a format that will assist subsequent scrutiny of the effect of the bill and the powers granted.

The amendments cover the necessary changes at Haymarket and Ocean Terminal, setting out the affected pages. They also cover changes for the Edinburgh Masonic Club, Victoria primary school and Odell Milne.

I move amendment 101.

Amendment 101 agreed to.

Amendments 102 and 103 moved—[Phil Gallie]—and agreed to.

Section 78, as amended, agreed to.

After section 79

The Convener: Amendment 104, in the name of Rob Gibson, is in a group on its own.

Rob Gibson: Land belonging to the Crown Estate commissioners cannot be acquired without their consent, which can be given either unconditionally or with conditions. Amendment 104 seeks to ensure that although Crown land may appear within the limits of deviation, it cannot subsequently be compulsorily acquired without the express consent of Crown Estate commissioners.

The approach taken in amendment 104 enabled the Crown Estate commissioners to withdraw their objection to the bill. It also means that the authorised undertaker will require additional

consent before the acquisition of such land, even where that is authorised by the bill.

I move amendment 104.

Amendment 104 agreed to.

Section 80 agreed to.

Long title agreed to.

The Convener: That ends phase 2 of consideration stage of the bill. The next stage is the final stage, when any member may lodge an amendment to the bill and when the whole Parliament will vote on whether to pass it.

I thank everybody for their attendance.

Meeting closed at 11:49.

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