FORTH CROSSING BILL COMMITTEE

AGENDA

3rd Meeting, 2010 (Session 3)

Wednesday 3 March 2010

The Committee will meet at 10.30 am in Committee Room 6.

1. Decision on taking business in private: The Committee will decide whether to take item 3 in private and whether to consider oral evidence in private at future meetings.

2. Forth Crossing Bill: The Committee will take evidence on the Bill at Stage 1 from—

   Graeme Malcolm, Transportation Manager, and David Brewster, Senior Environmental Health Officer, West Lothian Council;

   Bob McLellan, Head of Transportation Services, Fife Council;

   Marshall Poulton, Head of Transport, and Tom Stirling, Environmental Protection Manager, City of Edinburgh Council;

   and then from—

   Margaret Smith MSP, Member for Edinburgh West;

   Evelyn Woollen, Secretary, Newton Community Council;

   Martin Gallagher, Correspondence Secretary, Queensferry and District Community Council;

   and then from—

   John Howison OBE, Interim Project Director, Mike Glover OBE, Comission Project Manager, Andy Mackay, Commission Statutory Processes Manager, Frazer Henderson, Bill Manager, and Richard Greer, Commission Team Leader, Transport Scotland.
3. **Forth Crossing Bill:** The Committee will consider evidence taken during the meeting.

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Clerk to the Forth Crossing Bill Committee  
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Edinburgh  
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The papers for this meeting are as follows—

**Agenda item 2**

Consideration of General Principles

- West Lothian Council objection 84
- Fife Council written evidence
- City of Edinburgh Council written evidence
- City of Edinburgh Council objection 83
- Margaret Smith MSP objection 74
- Mary Mulligan MSP objection 69
- Newton Community Council objection 71
- Queensferry and District Community Council objection 65
- Kirkliston Community Council objection 49

Connecting Road Network

- Request to Promoter - Code of Construction Practice
- Promoter Response - Code of Construction Practice
- SPICe briefing Pre-Legislative Consultation
FORTH CROSSING BILL

CONSIDERATION OF GENERAL PRINCIPLES

Purpose

1. The purpose of this paper is to set out the arrangements for the Committee’s oral evidence meeting on the consideration of the general principles of the Bill.

Background

2. At Stage 1, the Committee has three functions—
   • to consider and report on the general principles of the Bill;
   • to consider and report on whether the Bill should proceed as a Hybrid Bill, that is to say:
     - whether the Bill adversely affects a particular interest of an individual or body in a manner different to the private interests of other individuals or bodies of the same category or class;
     - do the accompanying documents to the Bill satisfy the technical criteria that are set down in the Standing Orders and are they adequate to allow proper scrutiny of the Bill?
   • to give preliminary consideration to all objections and reject any objection where the objector’s interests are, in the opinion of the Committee, not clearly adversely affected by the Hybrid Bill. The Committee will also give full consideration to those objections (or parts thereof) which relate to the whole Bill.

Approach

3. As part of its consideration of the general principles, the Committee agreed at its meeting on 3 February 2010 to seek written evidence from a range of organisations on the general principles of the Bill. The Committee also agreed at that meeting its approach to oral evidence meetings at Stage 1 and, in particular, a provisional timetable for such meetings.

Written material received

4. The written evidence and objections that are relevant to this meeting have been circulated to the Committee and posted on to the Committee’s page on the Parliament’s website. Specifically, the written evidence from the following will be of particular relevance to the meeting—

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• City of Edinburgh Council
• Fife Council
• West Lothian Council (objection 84)
• City of Edinburgh Council (objection 83)
• Queensferry & District Community Council (objection 65)
• Newton Community Council (objection 71)
• Kirkliston Community Council (objection 49)
• Mary Mulligan MSP, Member for Linlithgow (objection 69)
• Margaret Smith MSP, Member for Edinburgh West (objection 74)

Witnesses

5. At the meeting, the Committee will hear oral evidence on the following topics—

- the road infrastructure designed to support the new crossing;
- the impact that routes and construction could have on local communities;
- associated issues in relation to the Code of Construction Practice; and
- associated issues in relation to noise and vibration.

from the following witnesses—

- Panel 1: West Lothian Council, Fife Council, City of Edinburgh Council;
- Panel 2: Margaret Smith MSP, Member for Edinburgh West, Queensferry & District Community Council, Newton Community Council.
- Panel 3: Promoter (Transport Scotland).

Conclusion

6. The Committee is invited to note the above arrangements for the meeting.

Committee clerks
February 2010
FORTH CROSSING BILL

CONNECTING ROAD NETWORK

Transport Scotland

The following is extracted from the Transport Scotland website¹—

1. Around 4km of connecting roads will be built to tie the new crossing into the main trunk road network.

2. To the south of the bridge, a new dual carriageway will link the crossing to the A90 and M9 making use of the recently completed M9 spur.

3. To the north, a new dual carriageway will connect the bridge to the A90/M90, incorporating junction enhancements at Admiralty and Ferrytoll and road widening between those junctions.

4. State-of-the-art Intelligent Transport System technology will be used along the full length of the scheme from the M90 Halbeath Junction over the bridge to the M9. This will improve traffic flow, reduce congestion and improve road safety.

5. By maximising the use of the existing road network, the connecting roads will result in less impact on the environment, properties and communities.

6. The connecting roads strategy has been one of the major pieces of work undertaken by the Forth Replacement Crossing team during 2008 and the early part of 2009 and the selected design is the result of a lengthy development process.

7. The location and layout of key road junctions for the Forth Replacement Crossing was finalised in April 2009, following further design development work and consultation with the public and stakeholders.

8. More than 2,200 people attended exhibitions at a range of venues in Fife, Edinburgh and West Lothian in January and Transport Scotland received just over 200 responses to the consultation. Comments relating to the key road junctions were factored into the design process to finalise the location and geometry of the junctions for South and North Queensferry. These have also been discussed with representatives of the towns’ community councils and local authorities.

Further information on the connecting road network

The following information is extracted from a SPICe briefing\(^2\)—

9. The Forth Crossing will be connected to the road network at its southern end by a new dual carriageway that links with a new junction onto the A904. There will also be a new connecting road which links to the A90 and thereby to the M9 in the south via the M9 spur. An enhancement at Junction 1a of the M9 will permit access to and from the M9 to the M9 spur. Eastbound, the revised two lane slip road from the M9 spur will join the lanes provided on the M9 to form a four lane carriageway with hard shoulder. The westbound approach to Junction 1a from Newbridge will be improved by the addition of an auxiliary exit lane from the River Almond bridge.

10. North of the Forth, the bridge will be connected to the M90/A90 by a new dual carriageway, with junction enhancements at Ferrytoll and road widening between this junction and Admiralty Junction as well as a realignment of a local road to North Queensferry.

11. Almost all the new roads, including the crossing, will be classified as a motorway. However, due to certain existing use-rights enjoyed by the A90, the section between Scotstoun and the new South Queensferry Junction will be a special road rather than a motorway. This road will be built to standard that can easily be upgraded to motorway and, as at present, the road will not be useable by cyclists, pedestrians or horse drawn vehicles.

12. As well as constructing new and upgraded roads, an Intelligent Transport System ("ITS") will be deployed along the route from the M90 Halbeath Junction over the crossing to the M9. An ITS allows the imposition of variable speed limits along a route with the aim of smoothing out the flow of traffic and preventing congestion caused by start-stop traffic. An ITS works by displaying the speed limit in operation at the time via signs mounted on overhead gantries. An ITS does not require primary legislation, it can be imposed via Orders made by Scottish Ministers. The provisions in the Bill relate solely to the acquisition of land needed to install and operate the ITS apparatus. To facilitate the operation of ITS, and provide for a single authority to maintain control over the full extent of the road linking the M9 to the M90, the Bill also provides for the transfer of control over certain local authority roads to the Scottish Ministers. More information on ITS can be found on page 11 of the Policy Memorandum which accompanies the Bill.

Committee clerks
February 2010

\(^2\) http://www.scottish.parliament.uk/business/research/briefings-10/SB10-05.pdf
Dear Frazer,

Forth Crossing Bill – Code of Construction Practice

The Promoter is requested to respond to the undernoted questions in relation to its Code of Construction Practice as lodged with the Bill documents.

The Committee in seeking this further information notes the following:

- Consideration has been given to the Codes of Construction Practice relating to Private Works Bills considered and passed by the Scottish Parliament in Session 2. In particular the Committee has noted that the Parliament, in approving the Code of Construction Practice relative to the Airdrie to Bathgate Railway and Linked Improvements Act 2007 (A2B), considered that it represented best practice for works bills.
- No consideration has as yet been given to any matters raised in objections or submissions relating to the Code of Construction Practice.
- The following represent an initial view by the Committee and should not at this stage be taken as representing a final consideration of the document.

1. Section 1 Introduction
1. Please explain how the proposed mitigation measures in the Environmental Statement are to be monitored and enforced including details of the roles for other agencies, local authorities and other bodies.
2. Please explain what “reasonably practicable means” entail and how they are to be monitored and enforced.
3. What contractual methods are to be included to require contractors to adhere to their Environmental Management Plans (EMP)? What sanctions are to be included and who will ensure compliance with the Environmental Management System (EMS)?
4. Re paragraph 1.8.4 please explain the circumstances that would not make it necessary to mitigate adverse effects?
5. Who will monitor and enforce method statements?
6. In general on this section please explain the consultation provisions that will apply regarding each of the documents, systems and plans.
7. Please also set out the arrangements to allow the general public access to each of the documents etc.
8. What will the responsibilities of the Employers Representative?
9. Please explain why the above person is not to be nominated by the local authorities and why that person’s responsibilities and powers are not as strong as those for the Independent Planning Monitoring Officers under A2B.
10. In relation to paragraph 1.11.4 please advise who the “others identified” in paragraph 1.7.6 are.

2. Section 2 Liaison and Public Information

11. Please confirm that this section complies in full with the National Standards for Community Engagement.
12. Please explain on what matters and in relation to what aspects engagement with local communities is sought.
13. What does liaise in paragraph 2.2.4 encompass?
14. What is the role, duties and responsibilities of the liaison officer?
15. In 2.3.1 first bullet please explain how the needs of those affected and others are to be established to enable the website to be updated. In particular what role, if any, will community representatives have?
16. How frequently is “regular” for the newsletter?
17. What alternative formats will the newsletter be available in?
18. What “reasonable steps” will be taken to notify affected occupiers of works?
19. Will such notification be guaranteed a minimum of 2 weeks in advance of works commencing?
20. What information will be contained in the notifications?
21. Will contact details etc be displayed around every construction site?
22. Are there any plans for community forums and if so please supply details?
23. Is there to be a commitments register and if so please detail the arrangements for publication and access etc.
24. What information from the complaints register is to be made available to local authorities?
25. What does “appropriate action” entail and what procedure will be followed if the complainer remains unsatisfied?

2.1 Section 3 General Site Operations
Will information providing emergency contacts and procedures be made available and if so how?

Please explain the justification for work commencing 1 hour earlier than for A2B.

What intimation of working covered by 3.4.2 will be provided and to whom?

What role will local authorities have in approving these and other departures?

Please confirm if the half hour start up and close down periods are prior to or after the times stated in 3.4.1. Please justify any departure from A2B.

Why is servicing of plant classified as “exceptional works”?

What time limit applies to intimations under 3.4.9?

What notification of “exceptional works” is to be provided to affected persons?

Will details of each site Operational Manager be publicly available along with contact details?

Are there equivalent provisions to those at 4.2 (good housekeeping) of A2B?

Have similar arrangements to those at 4.3 (construction compounds) of A2B been made?

In 3.5.4 should car parking be “within” the compounds?

What notification of additional land use (see 3.6.3) is to be provided and to whom, providing what notice?

What role will local authorities have in monitoring compliance with the requirements of this section?

What liaison is proposed with local bodies and others in relation to this section?

Section 4 Public Access and Traffic Management

What role do local authorities have in relation to the establishment of Traffic Management Plans?

What arrangements are being made to clean mud from roads?

What consultation will take place before vehicles are permitted to park on roads under 4.6.8?

What enforcement method and sanctions are proposed in the event that contractors do not abide by designated access routes?

Please advise the frequency of proposed monitoring and any involvement by or reporting to local authorities or other bodies that is envisaged.

Please advise what is proposed in 4.8.3 and how it will operate.

Section 6 Noise and Vibration

What arrangements are proposed for contractors’ plans to be produced and consulted upon and generally made available to the public?

What arrangements are proposed for community liaison under this section?

What arrangements are being made to protect existing buildings and structures? (see A2B section 8)
51 What consideration is being given to wildlife?
52 The equivalent list of best practicable means in A2B (7.4) covers additional matters; can you explain why these are not all covered here?
53 What consultation and notice provisions will apply to piling and blasting?
54 What are the proposals for consultation upon the risk assessments?
55 Why is the contractor not required to consult with local authorities and affected households when proposals differ from those in the Environmental Statement?
56 In 5.2.8 is the period referred to in the 2nd bullet 15 working days?
57 Why is consultation only proposed for non-residential properties in 5.2.9?
58 Please explain and justify the higher proposed levels in table 5.4.1 (compared to A2B).
59 Do the same levels apply to schools?
60 What notice is to be provided to affected properties when it is proposed thresholds are to be exceeded? What rights do they have to object, and if they do what is the procedure to determine objections?
61 Please justify the unilateral power in 5.4.4 to exceed levels outside working hours on the basis that they are required to meet programme requirements?
62 Please explain why no consultation and approval procedures apply to such works?
63 Please set out the details proposed to monitor noise levels including details of proposed receptors.
64 What minimum period of notice to affected persons is proposed for 5.4.6 applications?
65 In relation to vibration please set out community liaison proposals.
66 Please explain what “best practical means” are in 5.6.4.
67 What does “routinely exceeded” mean in 5.6.4?
68 Please justify the differences in levels and times in table 5.6.4 when compared to A2B.
69 What is the method proposed to resolve disputes under 5.6.8?
70 What proposals are there to report monitored levels making them available to the public and what role is envisaged for the employers’ representative?

Section 6 Dust and Air Pollution
71 Please explain why there is no equivalent detail supplied to that at 9.1 of A2B.
72 What are the “factors” referred to in 6.3.1 (2nd bullet)?
73 What liaison is proposed in relation to demolition activities and with whom?
74 What notice and to whom will be given of blasting and demolition activities?
75 What is the role of the employers’ representative under this section?

Section 7 Geology, Soils and Land Affected by Contamination
76 Please set out the liaison, monitoring and notice arrangements proposed for this section.
77 What role are the local authorities to have in development of the EMP?
78 Please advise the SSSI consents covered by 7.3.1.
79 What consultation is proposed for affected users of private water supplies?
80 Will adequate provision of water be made by the contractor for such persons during any disruption of supplies?
81 How quickly is the contractor required to repair or replace affected water Supplied?

Section 8 Disposal of Waste and Contaminated Materials
82 Can you confirm that this section of the EMP will set out the requirements to engage with SEPA?
83 The heading to section 8.3 includes “Minimisation” can you indicate which aspects cover minimisation and provide details?
84 What is the role of local authorities in relation to contaminated and hazardous materials?
85 What role does SEPA have in monitoring under this section and what reporting arrangements are made for contractors reporting to them?
86 What information will be made publicly available and how will that be done?

Section 9 Protection of the Water Environment
87 Please confirm that the detail of this section and sections 7 and 8 have been agreed and approved by SEPA
88 What is the role of local authorities under this section?
89 What consultation is proposed under this section?
90 What liaison is proposed under this section with locally affected bodies and persons?
91 Where are the emergency planning arrangements detailed? (see A2B 11.9)
92 Please specify which watercourses are affected by the Bill.

Section 10 Ecology
93 Please confirm that the detail of this section has been agreed with SNH and RSSB.
94 Please advise what monitoring and control arrangements are proposed for this section?
95 Please indicate who is accountable for ecology aspects once the Bill is passed?
96 What consultation is proposed for this section and with whom?
97 Please define for the purposes of this section “mature trees”
98 Please explain why all trees are not covered by 10.5.6.
99 Please indicate what the policy for replacing felled trees is?
100 In 10.6.1 please explain why the 2 year post working limit as utilised in A2B (12.7) has not been followed.

Section 11 Agricultural Resources
101 Please detail the proposed consultation arrangements for the management plan.
102 What notice period is to apply to section 11.2.4?
103 When is the liaison under 11.3.11 to occur?
Section 12 Archaeology and Cultural Heritage

104 Please confirm that the details of this section have been agreed with Historic Scotland.

105 What consultation arrangements are proposed for the Management Plan including the involvement of local authorities and land owners?

106 Please explain why Historic Scotland are not being involved in completion, implementation and monitoring of the plan.

107 Please detail what procedure will apply should Historic Scotland not agree with proposed measures under 12.3.3.

Section 13 Landscape and Visual

108 Please confirm that the details of this section have been agreed with SNH and local authorities.

109 What consultation arrangements are proposed for the Management Plan including the involvement of local authorities, land owners and the local public?

110 Please explain why SNH are not being involved in completion, implementation and monitoring of the plan.

111 Please detail what happens if SNH or others do not agree with proposed measures under this section.

112 Who is responsible for ensuring compliance with the plan?

Section 14 Pollution Incident Control and Response Planning

113 Please confirm SEPA are content with this section.

The Bill provisions

114 Please explain why section 68(3) of the Bill does not require consultation with all parties affected by the proposed change.

115 Please explain why the Bill does not provide local authorities with powers to enforce section 67 as if they were planning conditions.

Oral evidence is due to commence during the week commencing 24 February, your response to these matters relating to the Code of Construction Practice document should be with the Committee in advance of the session that week and will greatly facilitate consideration of the Bill at Stage 1.

Yours sincerely

Sarah Robertson
Clerk to the Committee
Dear Sarah

Forth Crossing Bill – Code of Construction Practice

Thank you for your letter dated 8 February 2010 regarding the Code of Construction Practice submitted with the Forth Crossing Bill. In addition to responding to the Committee’s queries, I have taken the opportunity to provide information to the Committee regarding the preparation of, and consultation on, the Code of Construction Practice and this is set out below.

Preparation of the Code of Construction Practice

In preparing the Code of Construction Practice we have taken account of the purpose of the Code of Construction Practice as required by the Parliament’s Standing Orders for Hybrid Bills, which are as follows:

2.35 The purpose of the CoCP is to identify the actions the Executive will require contractors and sub-contractors to take during the construction phase of the project to minimise the environmental and other impacts e.g. construction noise, dust pollution, disposal of waste material. It defines the minimum standards of construction practice required of contractors, informs those affected e.g. local communities of how the Executive will mitigate such impacts and on how they will be consulted and engaged over such mitigation and of the timetable for the construction works.

2.36 The CoCP is extremely useful in terms of identifying the means by which contractors will be required to carry out the works in a manner that seeks to minimise their environmental and other impacts. The CoCP can be incorporated into the contracts for the construction of the works proposed under the Bill. This ensures that all contractors and sub-contractors are required to fully comply with the terms of the document.

In relation to the above, we have set out in paragraph 1.2.3 of the Code that it will be incorporated into the construction contract documents. The contract documents will expand and provide additional detail on how the measures set out in the Code of Construction Practice will be implemented in the contract, where this is required.
We reviewed a number of Codes of Construction Practice whilst preparing the Code for the Forth Replacement Crossing, including those of previous Private Bills, such as the Airdrie – Bathgate Railway and Linked Improvements.

Consultation on the Code of Construction Practice

In addition, we consulted at two stages during preparing of the Code of Construction Practice for the project:

- In July 2009 we consulted local authorities, North Queensferry Community Council and Queensferry and District Community Councils regarding the content, structure and coverage of the developing draft document.
- In August 2009 we consulted with local authorities, environmental regulatory bodies, community councils and other organisations regarding the draft Code of Construction Practice. This included:
  - BEAR Scotland Ltd
  - The City of Edinburgh Council
  - Fife Constabulary
  - Fife Council
  - Fife Fire and Rescue
  - the Forth Estuary Transport Authority (FETA)
  - Historic Scotland
  - Inverkeithing Community Council
  - Kirkliston Community Council
  - Lothian and Borders Fire and Rescue Service
  - Lothian and Borders Police
  - Marine Scotland
  - Newton Community Council
  - North Queensferry Community Council
  - Queensferry and District Community Council
  - Rosyth Community Council
  - Scottish Ambulance Service
  - Scottish Environment Protection Agency
  - Scottish Natural Heritage
  - Transport Scotland’s Network Management Division and
  - West Lothian Council

- A copy of the draft Code of Construction Practice was also issued to constituency MSPs and councillors in August 2009.

Comments were received from the following organisations in response to the consultation:

- BEAR Scotland Ltd
- The City of Edinburgh Council
- Fife Council
Transport Scotland considered the comments received in response to the consultations in finalising the Code of Construction Practice. We also provided responses to the consultees advising them how their comments were considered prior to submitting the Forth Crossing Bill.

Response to the Committee’s Queries

I set out below our responses to the Committee’s initial queries using the same numbering system in your letter. I have included the original query from the Committee in italics for convenience.

Section 1 Introduction

1. Please explain how the proposed mitigation measures in the Environmental Statement are to be monitored and enforced including details of the roles for other agencies, local authorities and other bodies.

Section 67 of the Forth Crossing Bill requires the Scottish Ministers to do everything that is reasonably practicable in order to ensure that the Forth Crossing Works are carried out in accordance with the Code of Construction Practice and paragraph 1.2.4 of the Code of Construction Practice imposes a requirement on the Scottish Ministers to ensure compliance with the Code of Construction Practice through the construction contracts.

The Code of Construction Practice (paragraph 1.4.2) requires the contractor to provide the mitigation measures described in the Environmental Statement, or any other appropriate or equivalent mitigation measures. Mitigation measures include not only the provision of the measures set out in the Environmental Statement, but also the requirement for monitoring. This is explained in paragraph 1.11.3 of the Code of Construction Practice which requires the contractor to undertake monitoring as may be necessary to comply with the requirements of the Code of Construction Practice, including monitoring the effectiveness of mitigation measures and monitoring to enable compliance with the requirements of the Code of Construction Practice to be demonstrated.

Monitoring of mitigation measures by the contractor will be undertaken by suitably qualified personnel, including personnel with relevant environmental experience, in line with the requirements of paragraph 1.10.1 of the Code of Construction Practice.

In line with normal practice on major trunk road infrastructure projects, the Scottish
Ministers will provide a site-based team who will monitor the works being undertaken. This includes provision and maintenance of mitigation measures. This requirement is set out in paragraph 1.10.2 of the Code of Construction Practice and is the means by which the Scottish Ministers will discharge their obligation to ensure the works are carried out in accordance with the Environmental Statement, Code of Construction Practice and the construction contract. In addition to undertaking independent monitoring, the Scottish Ministers’ team will have full access to the contractor’s monitoring records to assist them execute their responsibilities. The Scottish Ministers will therefore take a significant and leading role in terms of ensuring compliance with environmental mitigation requirements.

Other organisations will have a key role in the planning and construction stages. The contractor has to consult with regulatory bodies during preparation of the Environmental Management Plan and its subsidiary plans. These plans, as described throughout the Code of Construction Practice, will set out the mitigation measures to be provided, including monitoring to be undertaken. Regulatory bodies such as the local authorities, SNH and SEPA have statutory obligations regarding the enforcement of environmental controls and standards and the purpose of the early consultation is to enable them to input to, and advise the contractor regarding, the adequacy of the measures to be implemented. The Environmental Management Plan, including subsidiary plans, is a key part of the contractor’s management system and only once it is accepted by the Scottish Ministers will construction works be permitted to commence.

The contractor will be required to keep these regulatory bodies informed of planned works and progress so they may, if they wish, undertake monitoring as part of their normal responsibilities. Monitoring information will be provided to these bodies by the contractor upon request in line with the requirements of paragraph 1.11.4 of the Code of Construction Practice so they may review that the works are proceeding with the necessary mitigation measures and controls in place. The design and build form of contract being used for the replacement crossing encourages the contractor to develop a positive working relationship with regulatory bodies including local authorities so they can have confidence that the works will be undertaken in accordance with the Environmental Statement.

2. Please explain what “reasonably practicable means” entail and how they are to be monitored and enforced.

As referred to in paragraph 1.4.2 of the Code of Construction Practice, the Scottish Ministers have given a commitment to employ all reasonably practicable means to ensure the residual environmental impacts of the construction and operation of the project are in line with those described in the Environmental Statement. This reflects the obligations of section 66 of the Forth Crossing Bill.

Reasonably practicable is used in situations where the imposition of an absolute duty or obligation is impracticable taking account of factors which may include items such as foreseeability, cost and the limits on the level of control that can be exercised. What constitutes reasonably practicable means is therefore dependent on the
specific matters being addressed. Environmental impacts can be assessed based on the conditions known (in the case of existing conditions) or likely (in the case of predicted impacts) to exist and mitigation measures can be developed from this. This is the process that has been followed in developing the mitigation measures set out in the Environmental Statement, Reports to Inform an Appropriate Assessment and controls in the Code of Construction Practice.

It follows that there is no obstacle to the measures set out in the Environmental Statement being implemented and that these constitute reasonably practicable means. This includes monitoring to ensure the effectiveness, as planned, of the mitigation measures, and that their effectiveness, based on the conditions that are known or likely to exist can be taken to be as described in the Environmental Statement.

3. **What contractual methods are to be included to require contractors to adhere to their Environmental Management Plans (EMP)? What sanctions are to be included and who will ensure compliance with the Environmental Management System (EMS)?**

The requirement to prepare and implement an Environmental Management Plan is set out in paragraph 1.7.1 of the Code of Construction Practice. Compliance with the Code of Construction Practice is a contractual requirement set out in the construction contract documents. This contractual requirement is in addition to the statutory obligation brought in by section 67 of the Forth Crossing Bill.

As described under point 1 above, the Environmental Management Plan, including subsidiary plans, is a key part of the contractor’s management system and only once it is accepted by the Scottish Ministers will construction works be permitted to commence.

The Scottish Ministers will have the authority, through the construction contract, to halt works which are not being undertaken in accordance with the contract. This is a significant sanction due to the type of contract being used for the construction of the project as the costs and programme delays that would result from works being halted, and the costs of any remedial works necessary to bring the works in line with the contract, would be borne by the contractor.

Outside of the contract, sanctions may be imposed by regulatory bodies in line with their statutory responsibilities and powers.

The contractor has a responsibility to ensure compliance with their Environmental Management System (paragraph 1.6.1 of the Code of Construction Practice). To enable the Environmental Management System to be maintained in accordance with the international standard BS EN ISO 14001: Environmental Management, the contractor has to undertake his own internal review and auditing of the system and controls in place. The Environmental Management System also has to be subject to independent, planned comprehensive periodic audit to ensure that it is effective in operation, is meeting specified goals, and the system continues to perform in accordance with relevant regulations and standards. Independent auditing is
necessary for certification to be granted and maintained in accordance with the
required standard.

The Scottish Ministers will undertake separate independent monitoring of the
Environmental Management System through the contract to ensure it complies with
the required standards.

4. *Re paragraph 1.8.4 please explain the circumstances that would not make it
necessary to mitigate adverse effects.*

It will generally be necessary, in line with the Environmental Statement, to mitigate
adverse effects on the environment where the effects could give rise to significant
impacts. If adverse effects are not likely to give rise to significant impacts (e.g. an
impact of negligible or slight significance), it may not be necessary to mitigate these
in all cases.

5. *Who will monitor and enforce method statements?*

Monitoring implementation of, and enforcement of method statements will be
undertaken in the same manner as described under query 1 above.

6. *In general on this section please explain the consultation provisions that will apply
regarding each of the documents, systems and plans.*

The system referred to in section 1 of the Code of Construction Practice is the
contractor’s Environmental Management System. This is a system which the
contractor will already have in place and will be accredited in accordance with BS EN
ISO 14001: Environmental Management and as such will not be subject to
consultation on the project. The contractor will have to demonstrate to the Scottish
Ministers that an accredited system is in place.

The key plans referred to in section 1 of the Code of Construction Practice are the
Construction Phase Health and Safety Plan, Environmental Management Plan and
its subsidiary plans, together with the traffic management related plans.

The contractor will prepare the Construction Phase Health and Safety Plan in
accordance with the Construction (Design and Management) Regulations 2007
(CDM) as described in paragraph 3.2.4 of the Code of Construction Practice. The
Scottish Ministers has appointed a CDM-Coordinator, also in accordance with these
regulations, who will review the plan and advise the Scottish Ministers if it is
adequate. Only once the Scottish Ministers are content that the plan is adequate will
construction works be permitted to commence.

The contractor will consult with bodies that have statutory responsibilities relating to
the environment when preparing the Environmental Management Plan and
subsidiary plans. These organisations are listed in paragraph 1.7.7 of the Code of
Construction Practice. The purpose of the plans is to ensure that the processes and
controls are in place for construction works to be undertaken in accordance with the
contractor’s Environmental Management System, the Environmental Statement, the Code of Construction Practice and other relevant requirements such as legislation, standards and codes of practice. The contractor will have to take consideration of the views of the bodies consulted to ensure that the plans meet this requirement. Only once the Environmental Management Plan and relevant subsidiary plans are in place will construction works be permitted to commence.

The contractor will consult with a Traffic Management Working Group formed for the project when preparing the traffic management related plans. As explained in paragraph 4.2.3 of the Code of Construction Practice, the Group includes representatives from roads authorities and the emergency services.

In addition to consulting during preparation of the various plans, individual sections of the Code of Construction Practice set out specific consultation requirements for the construction stages. The plans will set out the consultation processes to be followed to comply with these requirements.

Other documents referred to in section 1 of the Code of Construction Practice include method statements. The contractor will consult with organisations during preparation of method statements where required by the Environmental Statement. For example, paragraph 9.5.16 of the Environmental Statement requires method statements to be approved by SEPA for certain activities.

7. Please also set out the arrangements to allow the general public access to each of the documents etc.

If the general public wish access to any of the documents referred to in the Code of Construction Practice, enquiries would have to be made through the enquiries and complaints system described in section 2 of the Code of Construction Practice. Any requests will be considered by the Scottish Ministers’ site representative, known as the Employer’s Representative.

8. What will the responsibilities of the Employers Representative?

The construction contract will be a contract between the Scottish Ministers and the contractor. The Employer’s Representative, as defined in the Glossary in the Code of Construction Practice, is the person named by the Employer (the Scottish Ministers) in the contract who acts on behalf of the Employer. In addition to administering the contract on behalf of the Scottish Ministers, as explained in paragraph 1.10.2 of the Code of Construction Practice, the Employer’s Representative will lead the site team appointed by the Scottish Ministers to monitor all aspects of the construction works and ensure that construction works are undertaken in accordance with the Code of Construction Practice.

9. Please explain why the above person is not to be nominated by the local authorities and why that person’s responsibilities and powers are not as strong as those for the Independent Planning Monitoring Officers under A2B.
As explained in point 8, above, the Employer’s Representative will act on behalf of the Employer in the contract. Local authorities are not one of the parties in the contract and cannot therefore fulfil this role.

In the Airdrie to Bathgate project, Independent Planning Monitoring Officers were appointed with powers to enforce implementation of environmental mitigation measures and compliance with the Code of Construction Practice, Noise and Vibration Policy and Mitigation Commitments documents. However section 1.13 of the Airdrie to Bathgate Code of Construction Practice further defines that the role of the Independent Planning Officer is not to duplicate the compliance regime implemented by the Promoter but that the Officer will have full visibility of the project compliance regime and participate in joint monitoring activities. This information and opportunity will be provided to local authorities and other regulatory bodies, should they wish, to assist them fulfil their statutory obligations.

The Scottish Ministers have an obligation to ensure the works are undertaken in accordance with the Environmental Statement, Appropriate Assessments and Code of Construction Practice. As the Scottish Ministers will have an experienced site team in place, they do not consider that they require additional oversight from local authorities through an Independent Planning Monitoring Officer to ensure that the construction works comply with these requirements. This is consistent with the approach taken on all other major trunk road infrastructure projects in Scotland.

10. In relation to paragraph 1.11.4 please advise who the “others identified” in paragraph 1.7.6 are.

This is a typographical error and should refer to paragraph 1.7.7.

Section 2 Liaison and Public Information

11. Please confirm that this section complies in full with the National Standards for Community Engagement.

In paragraph 2.2.2 of the Code of Construction Practice, Transport Scotland stated that its ongoing communications strategy for the project will reflect the construction stage of the Project and will include details of the procedures to be implemented to:

- maintain effective community engagement throughout the construction period to build on existing relationships with the communities alongside the scheme;
- inform affected communities about how the effects of construction activities will be mitigated;
- inform affected communities about the timetable of the construction works; and
- provide information on enquiry and complaint procedures.

The strategy will be in accordance with the National Standards listed above and will include regular community liaison through established community groups so that information is shared between the Scottish Ministers and the community groups.
12. *Please explain on what matters and in relation to what aspects engagement with local communities is sought.*

The extent of engagement and the liaison process to be implemented will be discussed and agreed with the community groups in advance of construction works commencing. It is anticipated that engagement will include providing information such as the progress of construction works, planned works and compliance with the Code of Construction Practice. It will also provide a structured forum, outside of the enquiries and complaints procedure set out in the Code of Construction Practice for community groups to advise of community concerns so these may be considered and addressed as appropriate.

13. *What does liaise in paragraph 2.2.4 encompass?*

The contractor is required by paragraph 2.2.4 of the Code of Construction Practice to liaise with various organisations, businesses, community groups and residents on matters relating to the construction of the scheme to meet the requirements set out in the Code of Construction Practice. As explained in point 12 above, liaison will include provision of information by the Scottish Ministers, contractor and those being consulted. The aim of this liaison process is to keep all parties fully informed of construction activities and concerns as part of the process to ensure that works are undertaken in accordance with the Environmental Statement and Code of Construction Practice with a key focus being to minimise complaints and ensure that any complaints are dealt with efficiently and effectively.

14. *What is the role, duties and responsibilities of the liaison officer?*

Paragraph 2.2.3 of the Code of Construction Practice requires the contractor to appoint a community liaison officer and liaison team who will be responsible for community engagement for the contracting organisation. This will include all input to the communications programme described in Section 2.3 of the Code of Construction Practice, including:

- ensuring the information on the website provides up to date and accurate information
- providing input to project briefings and site visits
- ensuring the information in project newsletter provides up to date and accurate information
- ensuring that notifications to local residents regarding construction works that may affect them are provided
- operating the enquiries and complaints procedure

The community liaison officer will also ensure that the contractor contributes to and supports the implementation of effective communications and fulfilment of the community engagement objectives set out in the Code of Construction Practice and undertake the liaison required by paragraph 2.2.4 of the Code of Construction Practice, as described under point 13 above.
15. **In 2.3.1 first bullet please explain how the needs of those affected and others are to be established to enable the website to be updated. In particular what role, if any, will community representatives have?**

The Scottish Ministers have undertaken extensive consultation and community engagement activities during the development of the project. Information gathered through this process has provided an understanding of the concerns of communities and local residents. This information, together with other information gathered through the engagement process implemented during the construction stages, will be used by the Scottish Ministers to ensure that the website and newsletters prepared provide information which communities and residents find informative and valuable. Section 2.3 of the Code of Construction Practice requires information to be provided on the website and/or newsletters and/or notifications to local residents covering the following:

- the progress of the construction works
- current areas affected by construction
- mitigation in place to reduce adverse effects of construction
- information regarding planned construction works
- traffic management that will be in place affecting existing roads and footpaths
- details of the enquiries and complaints procedure
- the nature and anticipated duration of planned construction works that may affect residents

16. **How frequently is “regular” for the newsletter?**

The newsletter is likely to be published on a quarterly basis. The website will be updated monthly.

17. **What alternative formats will the newsletter be available in?**

The newsletter will be available in both paper and electronic formats. The electronic format will also be available on the project website.

18. **What “reasonable steps” will be taken to notify affected occupiers of works?**

The steps to be taken will be determined by the contractor but it is expected that this will include as a minimum direct correspondence and/or mail drops.

19. **Will such notification be guaranteed a minimum of 2 weeks in advance of works commencing?**

The notification referred to under paragraph 2.3.1 will be a minimum of two weeks in advance of works commencing.

20. **What information will be contained in the notifications?**

As explained in the Code of Construction Practice, the notifications to local residents
will include information regarding the nature and anticipated duration of planned construction works that may affect them, together with details of the enquiries and complaints procedure. The information will include:

- The location of the planned works
- The type of planned works which are anticipated to give rise to effects on adjacent residents
- The duration of the planned works and the periods within which works will be undertaken (i.e. whether during normal working hours, during the evening or overnight)
- The anticipated effects of the planned works
- The measures to be implemented in line with the Environmental Statement and Code of Construction Practice to mitigate the impact of the planned works

21. **Will contact details etc be displayed around every construction site?**

The relevant contact numbers, email and postal addresses for the enquiries and complaints system will be displayed on signs around the construction site. The site is linear in nature and therefore signs will be erected along the site at intermittent locations where they are visible to adjacent residents and the public.

22. **Are there any plans for community forums and if so please supply details?**

Please refer to the response to points 12 and 13 above.

23. **Is there to be a commitments register and if so please detail the arrangements for publication and access etc.**

A commitments and undertakings register will be prepared detailing commitments given by the Scottish Ministers during the consideration of the Forth Crossing Bill by the Scottish Parliament. It is also anticipated it will be provided on the Forth Crossing Bill Committee section of the Scottish Parliament website and subsequent to the Parliamentary process on the project website.

24. **What information from the complaints register is to be made available to local authorities?**

It is anticipated that both summary and more detailed information from the enquiries and complaints register will be provided to the local authorities upon request but the level of detail will depend on the requests from the local authorities. Such information will include summary and/or detailed information regarding:

- the number of enquiries and complaints
- the topics of enquiries and complaints
- the measures taken to investigate, deal with or address enquiries and complaints
- the timescale taken to respond to or address enquiries and complaints

Personal information protected by data protection legislation will not be provided.
25. **What does “appropriate action” entail and what procedure will be followed if the complainant remains unsatisfied?**

The extent of appropriate action will depend on the nature of the complaint. All complaints will be investigated to establish the cause of the complaint and whether the works comply with the Environmental Statement, Code of Construction Practice and other relevant requirements such as legislation, standards and codes of practice. The investigations will also consider whether the effects which give rise to a complaint are unavoidable consequences despite the works being undertaken in accordance with these documents and requirements or whether they are avoidable. Where measures or actions in accordance with these documents and requirements can be provided or taken to resolve complaints this will be done. Parties making a complaint will be contacted to advise them of progress being made in addressing the complaint and then again following completion of any actions taken to resolve the complaint. If it is not possible to resolve the complaint, an explanation of why this is the case will be provided.

**Section 3 General Site Operations**

26. Note there is no number 26 in the letter from the committee.

27. **Will information providing emergency contacts and procedures be made available and if so how?**

The emergency procedures will be set out in the Construction Phase Health and Safety Plan, Area Management Plan and Pollution Incident Response Plan referred to in Section 3 and 14 of the Code of Construction Practice.

It is a requirement of the Construction (Design and Management) Regulations 2007 referred to in paragraph 3.2.4 of the Code of Construction Practice that the Construction Phase Health and Safety Plan identifies the risks to health and safety arising from the construction work (including the risks specific to the particular type of construction work concerned) and includes suitable and sufficient measures to address such risks, including any site rules. These measures include emergency plans and procedures to be implemented and emergency contact details.

The Management of Health and Safety at Work Act 1999 (as amended) referred to in Section 3.13 of the Code of Construction Practice also require the setting up of emergency procedures and provision of training and information to employees.

Where plans and procedures involve other organisations such as the Health and Safety Executive, emergency services, local authorities or environmental organisations, the contractor will consult with them regarding the plans and procedures being put in place and provide copies of the relevant plans and procedures.
28. *Please explain the justification for work commencing 1 hour earlier than for A2B.*

The criticality of the programme for completion of the Forth Replacement Crossing has led to the development of the working hours and working hours procedure set out in Section 3.4 of the Code of Construction Practice. The normal working hours are Monday to Saturday 0700 to 1900 hours. This is in line with the guidance provided to contractors by The City of Edinburgh Council entitled “Construction Site Noise, A Guide for Contractors, Services for Communities”.

29. *What intimation of working covered by 3.4.2 will be provided and to whom?*

Intimation of works at night and on Sundays will be provided through the project website, newsletters and notifications to local residents in accordance with the procedures set out in Section 2.3 of the Code of Construction Practice.

30. *What role will local authorities have in approving these and other departures?*

The Scottish Ministers will have responsibility for approving works, both within and outwith normal working hours. Prior to any works commencing, the contractor is required to undertake a noise assessment and submit this to the Scottish Ministers for their approval, as set out in paragraph 5.2.3 of the Code of Construction Practice. This is part of the procedure to assure the implementation of best practicable means to minimise noise (including vibration) and ensure that construction works and noise levels are in accordance with the Environmental Statement and Code of Construction Practice.

Local authorities will have responsibility to approve construction works which are undertaken outwith the noise and vibration thresholds set out in Sections 5.4 and 5.6 of the Code of Construction Practice irrespective of whether they are carried out within or outwith normal working hours.

31. *Please confirm if the half hour start up and close down periods are prior to or after the times stated in 3.4.1. Please justify any departure from A2B.*

As stated in paragraphs 3.4.4 and 3.4.5 of the Code of Construction Practice, the half hour start-up and close-down periods are within the periods stated in paragraph 3.4.1. They are therefore after the 0700 start time and before the 1900 end time for normal working hours. This is the same approach as taken on the Airdrie to Bathgate scheme.

32. *Why is servicing of plant classified as “exceptional works”?*

Not all servicing of plant is classified as exceptional work. Paragraph 3.4.8 of the Code of Construction Practice clarifies that it is only servicing of plant essential to maintain safe operation of the site. Servicing includes maintenance of plant and where this is essential to maintain safety on the site it is extremely important that this be permitted. An example of when the need may arise would be essential repairs or servicing of plant involved in marine works which is involved in works outwith normal
working hours.

33. **What time limit applies to intimations under 3.4.9?**

No time limit has been specified due to the uncertain and unforeseeable nature of exceptional works. The requirement is that notification to the Employer's Representative as soon as possible after the contractor becomes aware that exceptional works are necessary. However, these works, as explained in paragraph 3.4.8 of the Code of Construction Practice, are generally emergency works and it is expected that the notification period, in line with typical emergency procedures, will be very short and in most instances will be immediate.

34. **What notification of “exceptional works” is to be provided to affected persons?**

If exceptional works are necessary it is considered that this would be most likely to affect those parties listed in paragraph 3.4.9 and as such the notification would be as soon as possible after the contractor becomes aware that exceptional works are necessary. As with the Employer’s Representative, it is considered that the time limit for this would be very short and in most instances will be immediate. If emergency works were to affect other parties, the same notification would apply. The notification would include an explanation of what the exceptional works were in response to and what the works comprised.

35. **Will details of each site Operational Manager be publicly available along with contact details?**

It is not considered necessary to make details and contact information for the site operational manager publicly available. It is preferable that all enquiries and complaints are handled through the procedures described in Section 2 of the Code of Construction Practice as this will ensure the highest level of service in dealing with any enquiries or complaints and facilitate, through the establishment of a relationship between the communities and the contractor, more effective community engagement.

36. **Are there equivalent provisions to those at 4.2 (good housekeeping) of A2B?**

The good housekeeping provisions in the Airdrie to Bathgate scheme are reflected in paragraph 3.5.6 of the Code of Construction Practice.

37. **Have similar arrangements to those at 4.3 (construction compounds) of A2B been made?**

The locations of site offices and compounds are described in paragraph 3.5.3 of the Code of Construction Practice.

The site compound locations have been considered in the Environmental Statement and are part of the land to be made available for construction of the scheme. The full requirements of the Code of Construction Practice therefore apply to land for
construction compounds, such as the requirement to undertake ecological surveys to establish baseline conditions and implement appropriate mitigation measures set out in paragraph 10.2.3 of the Code of Construction Practice.

The detail provided in the Airdrie to Bathgate scheme Code of Construction Practice in relation to traffic signs is adequately covered by the references in paragraph 4.2.2 of the Code of Construction Practice to the Traffic Signs Manual Chapter 8: Traffic Safety Measures and Signs for Road Works and Temporary Situations and also the Traffic Signs Regulations and General Directions 2002, as amended.

38. *In 3.5.4 should car parking be “within” the compounds?*

Car parking facilities provided by the contractor are considered to be part of the site offices and compounds and therefore the need to provide adequate car parking facilities for construction vehicles and those of construction workers at each site office and compound is considered to be within the boundaries of the offices and compounds.

39. *What notification of additional land use (see 3.6.3) is to be provided and to whom, providing what notice?*

If the contractor wishes to make any additional land available for construction purposes he will have to agree with the relevant landowner. Any proposed changes to the extent of the site will have to be made known to the Scottish Ministers’ representatives on site. As stated in paragraph 3.6.3, an environmental impact assessment of the use of this land will also be undertaken to ensure that any impacts due to construction are line with those described in the Environmental Statement. In line with normal procedures for environmental impact assessments, the contractor will have to consult with relevant organisations such as local authorities, SNH, the Scottish Environmental Protection Agency and Historic Scotland. Only once an environmental impact assessment has been undertaken and the impact due to the use of the land is confirmed as being in line with the Environmental Statement would the land be permitted to be used.

40. *What role will local authorities have in monitoring compliance with the requirements of this section?*

In general, the local authorities’ role in monitoring compliance will be as described under point 1. Specifically, local authorities will have responsibilities regarding working hours (as described under point 30 above), control of pollution (including taking actions in accordance with their responsibilities under the Control of Pollution Act 1974 and Environmental Protection Act 1990), control of pests (including taking action in accordance with their responsibilities under the Prevention of Damage by Pests Act 1949) and considering any requests relating to living accommodation (as described in Section 3.8 of the Code of Construction Practice).
41. **What liaison is proposed with local bodies and others in relation to this section?**

   All community engagement and liaison is covered by Section 2 of the Code of Construction Practice, for which further explanation has been provided under points 11 to 25 above.

**Section 4 Public Access and Traffic Management**

42. **What role do local authorities have in relation to the establishment of Traffic Management Plans?**

   The local authorities are part of the Traffic Management Working Group, as stated in paragraph 4.2.3 of the Code of Construction Practice. The contractor will consult with this group when developing his traffic management proposals. The contractor will be responsible for developing and implementing traffic management proposals in accordance with relevant standards such as the Traffic Signs Manual Chapter 8: Traffic Safety Measures and Signs for Road Works and Temporary Situations and will have to demonstrate to the Traffic Management Working Group that the proposals comply with the Code of Construction Practice include providing measures to reduce the likelihood of traffic diverting onto alternative routes, to mitigate potential impacts on the local community and keep delays and disruptions to traffic to a reasonably practicable minimum.

43. **What arrangements are being made to clean mud from roads?**

   The contractor is required by paragraph 4.6.5 of the Code of Construction Practice to use best endeavours to keep roads, accesses and the like free from mud and other loose materials arising from the works. The specific methods will be determined by the contractor but he will have to be able to demonstrate that he is meeting the required commitment in effort and result in keeping roads free from mud and other loose materials. Examples of measures which are likely to be employed include wheel washing facilities at site accesses/egresses, operatives to inspect vehicles and roads, and to operate wheel washing facilities, road cleaning vehicles.

44. **What consultation will take place before vehicles are permitted to park on roads under 4.6.8?**

   No consultation is planned for the circumstances covered by paragraph 4.6.8.

45. **What enforcement method and sanctions are proposed in the event that contractors do not abide by designated access routes?**

   The Scottish Ministers’ site team will ensure compliance with use of designated access routes as imposed within the contract by effective monitoring.
46. Please advise the frequency of proposed monitoring and any involvement by or reporting to local authorities or other bodies that is envisaged.

In general, the frequency of monitoring by the contractor will be that which is necessary to ensure, and be able to demonstrate compliance with the Code of Construction Practice, as stated in paragraph 1.11.3 of the Code of Construction Practice. The frequency of monitoring is not stated as this provision requires the contractor to monitor to the extent that is necessary, rather than at a minimum frequency which may not ensure the same compliance.

47. Please advise what is proposed in 4.8.3 and how it will operate.

The type of works involved, for example in earth-moving, may lead to some loose material falling from vehicles onto roads in the vicinity of site accesses/egresses or along delivery routes. The contractor will monitor these locations so they can be cleaned as required.

Section 6 Noise and Vibration

48. What arrangements are proposed for contractors’ plans to be produced and consulted upon and generally made available to the public?

In line with the requirements of paragraph 1.7.7 of the Code of Construction Practice, the contractor will have to consult local authorities and other bodies during development of the Noise and Vibration Management Plan. The contractor will also consult with local authorities regarding likely noise levels and mitigation measures to be implemented, as required by paragraph 5.4.5 of the Code of Construction Practice.

Information regarding the construction programme and planned construction works will be made available through the community engagement process described in Section 2 of the Code of Construction Practice. Additional information regarding the community engagement procedures is provided under points 11 to 25 above.

49. What arrangements are proposed for community liaison under this section?

All community engagement and liaison is covered by Section 2 of the Code of Construction Practice, for which further explanation has been provided under points 11 to 25 above.

50. What arrangements are being made to protect existing buildings and structures? (see A2B section 8).

The following measures are proposed to protect buildings and structures:

- Paragraph 5.2.2 – use of Best Practicable Means to control and limit noise and vibration.
- Paragraph 5.2.3 – undertaking an assessment of likely noise and vibration levels
as part of assuring the implementation of best practicable means to minimise noise (including vibration) to be approved by the Scottish Ministers’ site representative.

- Paragraph 5.2.3 – the measures described in the bullet points under this paragraph.
- Paragraph 5.2.4 – piling works and blasting works will be kept to the minimum practicable taking consideration of the requirements of the design and programme requirements for construction of the Project.
- Paragraph 5.2.6 – carrying out of a risk assessment of construction works on the structural integrity of adjacent buildings and structures and undertaking structural or dilapidation survey of all buildings or structures considered to be at risk due to vibration. The contract documents require preventative measures to be undertaken by the contractor to protect buildings or structures from damage if the surveys indicate this is necessary.
- Section 5.3 – preparation and implementation of the Noise and Vibration Management Plan.
- Section 5.6 – compliance with the requirements of this section, including vibration thresholds, during construction works.
- Paragraph 5.6.7 – consultation with Network Rail regarding vibration limits, monitoring and notification requirements for construction works.
- Paragraph 4.3.8 – consultation with the operators of railways regarding construction works on, over or adjacent to railways or other works which may affect railways and obtaining any consents necessary for the works to be undertaken.
- Section 5.7 – monitoring to ensure compliance with the Code of Construction Practice.

Paragraph 7.3.4 of the Code of Construction Practice also requires the contractor to implement measures including risk assessments, groundwater monitoring and building surveys where there may be potential settlement risks or a risk of lateral ground movements due to construction works which may damage structures.

In line with normal standards of construction practice, the contractor will implement measures to protect third party apparatus such as cables, sewers, pipes and the like.

What consideration is being given to wildlife?

Specific requirements to protect wildlife from airborne noise are set out in the Reports to Inform an Appropriate Assessment, as referred to in paragraph 5.2.7 of the Code of Construction Practice. Information regarding the Reports to Inform and Appropriate Assessment is provided in Sections 1.4 and 10.3 of the Code of Construction Practice.

The Reports to Inform an Appropriate Assessment also cover waterborne noise and reference to the controls to be put in place is provided in Section 5.5 of the Code of Construction Practice.

Paragraph 5.7.1 of the Code of Construction Practice requires monitoring to be
undertaken by an Ecological Clerk of Works and a Marine Mammal Observer in relation to noise and vibration due to construction activities which are covered in the Reports to Inform and Appropriate Assessment.

52. The equivalent list of best practicable means in A2B (7.4) covers additional matters; can you explain why these are not all covered here?

The majority of items in Section 7.4 of the Airdrie to Bathgate scheme Code of Construction Practice are covered by the generality of the list provided in paragraph 5.2.3 of the Code of Construction Practice. It is noted that both the list in the Airdrie to Bathgate scheme and the Forth Replacement Crossing Codes of Construction Practice are examples and are not intended to be fully exhaustive lists. Paragraph 1.11.2 of the Code of Construction Practice explains that any lists are not to be considered as fully exhaustive unless explicitly stated. In this regard, it is noted that there are items in the Forth Replacement Crossing Code of Construction Practice which are not in the Airdrie to Bathgate scheme list. The content of the lists, however, is not considered to be overly significant as it is the requirement to use Best Practicable Means in accordance with the Control of Pollution Act 1974 that is the significant and overriding requirement.

53. What consultation and notice provisions will apply to piling and blasting?

As explained under point 30 above, the Scottish Ministers will have responsibility for approving works, both within and outwith normal working hours and a noise assessment has to be undertaken and approved as part of the procedure to assure the implementation of best practicable means to minimise noise (including vibration). This will also ensure the works are undertaken in accordance with the Environmental Statement. If the assessment indicates that the works will exceed the thresholds in the Code of Construction Practice, the Contractor will have to seek consent from the local authority. The contractor will also consult with local authorities regarding likely noise levels and mitigation measures to be implemented, as required by paragraph 5.4.5 of the Code of Construction Practice.

The notice provided by the contractor for the approval and consent process will have to be sufficient to enable approvals to be given and notifications provided in accordance with the community engagement procedure set out in Section 2 of the Code of Construction Practice.

54. What are the proposals for consultation upon the risk assessments?

The contractor will consult with the owners and occupiers of buildings identified by the risk assessment to be potentially at risk due to vibration. The consultation will be to seek to agree entry to undertake building condition surveys, and then if necessary undertake any precautionary works which may be necessary in advance of works commencing to address the risks identified. Building condition surveys will be undertaken prior to and following completion of construction works.

55. Why is the contractor not required to consult with local authorities and affected
households when proposals differ from those in the Environmental Statement?

The requirement in paragraph 5.2.7 of the Code of Construction Practice to consult where proposals differ from those assumed by the Environmental Statement and the Reports to Inform an Appropriate Assessment relates to ecology and potential impacts on the Special Protection Areas and Special Area of Conservation. Whilst the impact of the scheme must be within the limits described in the Environmental Statement, it is possible that the precise proposals and working methods may differ slightly from those in the Reports to Inform an Appropriate Assessment. Where this is the case, the contractor will consult with those organisations listed in paragraph 5.2.7 in order to confirm that their proposed methods are in accordance with the Appropriate Assessments or to establish whether additional Appropriate Assessments are required to ensure that the impacts of the scheme are in line with the Environmental Statement and Appropriate Assessments.

The contractor will consult with local authorities regarding likely noise levels and mitigation measures to be implemented, as required by paragraph 5.4.5 of the Code of Construction Practice.

56. In 5.2.8 is the period referred to in the 2nd bullet 15 working days?

The period refers to consecutive calendar days.

57. Why is consultation only proposed for non-residential properties in 5.2.9?

The consultation referred to in paragraph 5.2.9 is with non-residential properties to establish whether any specific mitigation for these properties is necessary to mitigate the effects of construction noise. Consultation is not specified in this paragraph for residential properties as the measures to mitigate the effects of construction noise, where it cannot be mitigated to the necessary levels through application of Best Practicable Means to minimise noise, are set out in the Noise Insulation (Scotland) Regulations 1975. Non-residential properties are not covered by these regulations and so this specific consultation requirement is considered necessary. If residential properties are considered by the contractor’s assessment to qualify for mitigation in accordance with the regulations the owners and occupiers of the properties will be consulted.

58. Please explain and justify the higher proposed levels in table 5.4.1 (compared to A2B).

The noise levels in Section 7.5 of the Airdrie to Bathgate scheme Code of Construction Practice are noise limits whereas the levels in Table 5.4.1 of the Forth Replacement Crossing Code of Construction Practice are thresholds, above which consent from the local authority will be required in accordance with the consent process set out in Section 61 of the Control of Pollution Act 1974. Whilst the approach taken on the Airdrie to Bathgate scheme was to specify limits in the Code of Construction Practice, the approach on the Forth Replacement Crossing is that the noise levels cannot result in an impact which is greater than that described in the
Environmental Statement. Chapter 19 of the Environmental Statement, and Appendix A19.2 in particular, describes the assessment of impacts due to construction noise. This requirement means that the noise levels during construction will generally be much lower than the thresholds in Table 5.4.1. The Environmental Statement explains that in some instances noise levels greater than the thresholds in Table 5.4.1 are likely to occur, and when this is predicted in the assessments required by paragraph 5.2.3 of the Code of Construction Practice additional consent will be necessary from the relevant local authority.

59. **Do the same levels apply to schools?**

   Yes.

60. **What notice is to be provided to affected properties when it is proposed thresholds are to be exceeded? What rights do they have to object, and if they do what is the procedure to determine objections?**

The notification procedure set out in Section 2.3 of the Code of Construction Practice will apply to all works which may affect adjacent residents, including those where noise levels above the thresholds are predicted to occur and consent for those works has been provided by the relevant local authority. Where, as part of the consent process, it is determined that properties will qualify for an offer in respect of noise insulation or in extreme circumstances temporary rehousing, the consultation and work associated with this will need to be completed prior to the works commencing.

The consent process for works above the threshold will follow the procedure set out in Section 61 of the Control of Pollution Act 1974. This procedure does not afford the opportunity for public objection. However, in considering an application under Section 61 of the Control of Pollution Act, the local authority has to have regard to the factors listed in Section 60(4) which includes the need to protect any persons in the locality from the effects of noise.

61. **Please justify the unilateral power in 5.4.4 to exceed levels outside working hours on the basis that they are required to meet programme requirements?**

Paragraph 5.4.4 does not confer unilateral power to exceed the noise thresholds in Table 5.4.1 of the Code of Construction Practice. Paragraph 5.4.4 requires the contractor to limit construction activities which could cause disturbance outside normal working hours. Disturbance may, for example, be caused by levels which are within the thresholds in the Code of Construction Practice and in this instance will only be permitted if it is an essential requirement of the critical programme for the project in order to complete it by 2016 or if the works need to be completed to ensure the integrity of the infrastructure being provided. The overriding requirements, as stated under point 58 above, are that the noise impacts are not worse than those described in the Environmental Statement and that the works are approved through the assessments required by paragraph 5.2.3 of the Code of Construction Practice.
62. *Please explain why no consultation and approval procedures apply to such works?*

Please also refer to the response to point 61 above.

As explained under point 30 above, the Scottish Ministers will have responsibility for approving works, both within and outwith normal working hours and a noise assessment has to be undertaken and approved as part of the procedure to assure the implementation of best practicable means to minimise noise (including vibration). This will also ensure the works are undertaken in accordance with the Environmental Statement. If the assessment indicates that the works will exceed the thresholds in the Code of Construction Practice, the Contractor will have to seek consent from the local authority. The contractor will also consult with local authorities regarding likely noise levels and mitigation measures to be implemented, as required by paragraph 5.4.5 of the Code of Construction Practice.

If during the course of the works an unforeseen situation arises where the contractor must continue works outwith normal working hours this would have to be in accordance with the permitted exceptional works covered by paragraph 3.4.8 of the Code of Construction Practice.

63. *Please set out the details proposed to monitor noise levels including details of proposed receptors.*

Rather than specifying individual noise monitoring locations, the approach taken places the onus on the contractor to undertake monitoring as is necessary to comply, and be able to demonstrate compliance, with the Code of Construction Practice.

The contractor will therefore determine the location of noise monitoring points and receptors. This will only be possible once he has determined the construction programme and methods to be adopted. Information regarding the proposed monitoring locations will be submitted to the Scottish Ministers as part of the assessments required by paragraph 5.2.3 of the Code of Construction Practice. If, after reviewing the assessments and likely noise effects, the Scottish Ministers consider additional noise monitoring to that proposed is necessary this will be undertaken by the contractor.

64. *What minimum period of notice to affected persons is proposed for 5.4.6 applications?*

Please refer to the response to point 60 above.

65. *In relation to vibration please set out community liaison proposals.*

All community engagement and liaison is covered by Section 2 of the Code of Construction Practice, for which further explanation has been provided under points 11 to 25 above.
66. **Please explain what “best practical means” are in 5.6.4.**

It is a requirement of the Control of Pollution Act 1974 and the Environmental Protection Act 1990 that Best Practicable Means are employed to minimise noise and to prevent, or to counteract the effects of, nuisance. The term is defined in Section 72 of the Control of Pollution Act 1974 and Section 79 of the Environmental Protection Act 1990 and a summary is provided in paragraph 5.2.2 of the Code of Construction Practice. The full definition from the Control of Pollution Act 1974 is as follows:

72. “Best practicable means”.

(1) This section shall apply for the construction of references in this Part of this Act to best practicable means.

(2) In that expression “practicable” means reasonably practicable having regard among other things to local conditions and circumstances, to the current state of technical knowledge and to the financial implications.

(3) The means to be employed include the design, installation, maintenance and manner and periods of operation of plant and machinery, and the design, construction and maintenance of buildings and acoustic structures.

(4) The test of best practicable means is to apply only so far as compatible with any duty imposed by law, and in particular is to apply to statutory undertakers only so far as compatible with the duties imposed on them in their capacity of statutory undertakers.

(5) The said test is to apply only so far as compatible with safety and safe working conditions, and with the exigencies of any emergency or unforeseeable circumstances.

(6) Subject to the preceding provisions of this section, regard shall be had, in construing references to “best practicable means”, to any relevant provision of a code of practice approved under the preceding section.

67. **What does “routinely exceeded” mean in 5.6.4?**

The vibration dose value referred to in paragraph 5.6.4 is a measure of vibration set out in British Standard BS6472, Guide to evaluation of human exposure to vibration in buildings. Given that this relates to construction, and not permanent operation, the thresholds in Table 5.6.4 are set at the upper bound of the range of levels which BS6472 explains could give rise to a low probability of adverse comment due to vibration. The thresholds represent the vibration dose over the measurement period stated in Table 5.6.4, whether that is due to continuous or intermittent vibration. The quantitative definition of routinely exceeding the criteria on a day-by-day basis will be dependant on the nature of the activity and the degree of exceedance. This will be confirmed by the contractor's Noise and Vibration Management Plan and noise and vibration assessment submitted for approval in accordance with paragraph 5.2.3 of the Code of Construction Practice. Other projects using the same criteria in Code of Construction Practices have adopted an objective measure that the criteria shall not to be exceeded by more than 1 in 5 consecutive days as a result of any construction activities.
68. Please justify the differences in levels and times in table 5.6.4 when compared to A2B.

The Airdrie to Bathgate scheme Code of Construction Practice was based on the 1992 version of BS6472. The Forth Replacement Crossing Code of Construction Practice is based on the substantially updated 2008 version of the standard.

In terms of criteria, the 1992 standard only identified a vibration dose value of 0.13 VDVg 8hr as the criterion for a low probability of adverse comment at night, where as the 2008 standard brings the night-time definitions in line with the day-time definitions such that now for night-time a low probability of adverse comment is identified in the range 0.1 to 0.2 VDVb 8hr. Please also refer to the response under point 67 above regarding the adoption of the upper bound of the range fo the vibration does value which would give rise to a low probability of adverse comment.

The 2008 standard has changed the vibration weighting to be used for the dominant vertical vibration axis from ‘g’ weighting to ‘b’ weighting. For many vibration signals this all but doubles the value of the measured dose. The different weighting applicable for the threshold values makes those adopted for the project more onerous than on the Airdrie to Bathgate scheme.

The Airdire to Bathgate scheme Code of Construction Practice only considered residential properties whist Table 5.4.6 of the Forth Replacement Crossing Code of Construction Practice also considers educational establishments, offices and commercial properties. The vibration dose value criteria for these properties are taken directly from BS6472: 2008 where the higher criterion for commercial properties reflects that people’s responses to vibration are coloured by being focused on other activities (as we are at work) and the different sensitivities demonstrated when the vibration is affecting a work place (less sensitive) rather than when in homes (more sensitive) or educational establishments.

69. What is the method proposed to resolve disputes under 5.6.8?

Paragraph 5.6.8 relates to vibration levels which are predicted to generate peak component particle velocities above 10 millimetres/second. This is above the thresholds defined in paragraph 5.6.5 of the Code of Construction Practice. Paragraph 5.6.6 of the Code of Construction Practice requires the contractor to apply for consent from the relevant local authority in accordance with the Control of Pollution Act 1974 where the works are outside the thresholds in paragraph 5.6.5. The normal consent procedure and determination by the local authority will therefore apply in this instance.

If the contractor is refused consent then the provisions of Section 61(7) of the Control of Pollution Act 1974 would apply and the contractor could seek to resolve the dispute in the courts. The procedure set out in paragraphs 5.6.6 and 5.6.8 of the Code of Construction Practice is intended to avoid this level of dispute occurring.

If it is agreed that there are no reasonable or practicable means in line with the
principle of Best Practicable Means to reduce predicted or measured vibration, the contractor is also required by paragraph 5.6.8 of the Code of Construction Practice to seek to agree with occupiers of properties any additional reasonable and practicable mitigation to be provided for occupants. Ultimately, mitigation, such as temporary rehousing described in paragraph 5.2.10 of the Code of Construction Practice can only be offered to occupants. If occupants do not wish to take advantage of this offer, works will proceed with measures in place to minimise vibration in line with Best Practicable Means, as approved by the Scottish Ministers, and the local authority through the Section 61 consent process.

70. What proposals are there to report monitored levels making them available to the public and what role is envisaged for the employers’ representative?

The contractor will provide monitoring records to the Employer’s Representative. Monitoring information will be published on the project website.

Section 6 Dust and Air Pollution

71. Please explain why there is no equivalent detail supplied to that at 9.1 of A2B.

Paragraph 6.2.4 explains that the contractor will use Best Practicable Means to prevent or counteract nuisance relating to dust and air pollution. Measures such as those listed in the Airdrie to Bathgate scheme Code of Construction Practice are contained in Sections 6.4 to 6.11 of the Code of Construction Practice. The format of Section 6 differs from that used in the Airdrie to Bathgate scheme Code of Construction Practice as it is tailored to relate to the features of the Forth Replacement Crossing project. The content of these sections provides additional detail regarding the controls listed in the Airdrie to Bathgate scheme Code of Construction Practice.

72. What are the “factors” referred to in 6.3.1 (2nd bullet)?

The factors referred to are the factors listed under paragraph 6.2.3 of the Code of Construction Practice relating to dust and air pollution which constitute a statutory nuisance.

73. What liaison is proposed in relation to demolition activities and with whom?

Demolition will only relate to structures within the Act limits and any infrastructure will therefore be the property of the Scottish Ministers. Consultation will be undertaken with the bodies listed under paragraph 1.7.7 regarding preparation of the relevant management plans which will set out the measures to control potential impacts due to demolition works.

The information provided under point 53 regarding consultations, approvals, notice and notifications also applies to this query.
74. **What notice and to whom will be given of blasting and demolition activities?**

   Please refer to the response to point 73 above.

75. **What is the role of the employers’ representative under this section?**

   The role of the Employer’s Representative is as described in paragraph 1.10.2 of the Code of Construction Practice, for which further explanation of the general responsibilities is provided in response to points 1 and 8 above.

**Section 7 Geology, Soils and Land Affected by Contamination**

76. **Please set out the liaison, monitoring and notice arrangements proposed for this section.**

   In line with the requirements of paragraph 1.7.7 of the Code of Construction Practice, the contractor will have to consult local authorities and other bodies during development of the Geology, Land Contamination and Waste Management Plan. The main statutory responsibilities, as set out in Planning Advice Note 33 Development of Contaminated Land lie with the local authorities and SEPA. Particular aspects where consultation will be focussed will include:

   - Consultation with SNH regarding the procedures for any works which may affect Ferry Hills Site of Special Scientific Interest (paragraph 7.3.1)
   - Consultation with the Coal Authority and SEPA regarding any works over abandoned mine workings (paragraph 7.3.2)
   - Consultation with owners and occupiers of buildings where building condition surveys are necessary (paragraph 7.3.4)
   - Consultation with local authorities and SEPA regarding controls and measures to deal with risks relating to working on land affected by contamination (paragraph 7.4.2, last bullet)
   - Consultation with local authorities and SEPA regarding site investigations (paragraph 7.5.3)

   The monitoring systems to be implemented will be determined by the contractor with specific requirements of that monitoring relating to Geology, Soils and Land Affected by Contamination set out in Section 7.7 of the Code of Construction Practice. The contractor will also have to undertake monitoring in accordance with paragraph 1.11.3 of the Code of Construction Practice to comply with, and be able to demonstrate compliance with, the requirements of the Code of Construction Practice.

   The notification procedure set out in Section 2.3 of the Code of Construction Practice will apply to all works which may affect adjacent residents.

77. **What role are the local authorities to have in development of the EMP?**

   The contractor will consult with regulatory bodies during preparation of the Environmental Management Plan and its subsidiary plans. These plans, as
described throughout the Code of Construction Practice, will set out the mitigation measures to be provided, including monitoring to be undertaken. Regulatory bodies such as the local authorities, SNH and SEPA have statutory obligations regarding the enforcement of environmental controls and standards and the purpose of the early consultation is to enable them to input to, and advise the contractor regarding, the adequacy of the measures to be implemented. The Environmental Management Plan, including subsidiary plans, is a key part of the contractor’s management system and only once it is accepted by the Scottish Ministers will construction works be permitted to commence.

78. *Please advise the SSSI consents covered by 7.3.1.*

Operations which affect a Site of Special Scientific Interest normally require a consent granted by SNH in accordance with the Nature Conservation (Scotland) Act 2004. Separate consent for operations which may affect a Site of Special Scientific Interest associated with the Forth Crossing Works will not be necessary as the scheme is authorised by the Forth Crossing Bill. The Environmental Statement has set out the works, potential impacts and mitigation measures to be implemented for operations which may affect Sites of Special Scientific Interest in Chapter 8 (Geology, Contaminated Land and Groundwater) and Chapter 10 (Terrestrial and Freshwater Ecology). SNH have been consulted regarding operations which may affect Sites of Special Scientific Interest during the development of the scheme and preparation of the Environmental Statement.

79. *What consultation is proposed for affected users of private water supplies?*

As explained in paragraph 7.6.1 of the Code of Construction practice the contractor will undertake a risk assessment of works which may affect private water supplies and will consult with owners and users of private water supplies prior to any works which present a risk being undertaken. Measures will be taken to ensure that those who may be affected have adequate water supplies during and after construction works are complete.

80. *Will adequate provision of water be made by the contractor for such persons during any disruption of supplies?*

Yes.

81. *How quickly is the contractor required to repair or replace affected water supplies?*

The contractor is required to repair or replace affected water supplies as soon as possible so that parties are not without water.
Section 8 Disposal of Waste and Contaminated Materials

82. Can you confirm that this section of the EMP will set out the requirements to engage with SEPA?

Paragraph 8.2.4 of the Code of Construction Practice requires the contractor to consult with relevant local authorities and SEPA regarding the development of the Geology, Land Contamination and Waste Management Plan. The consultation arrangements to be followed during construction works will be agreed with SEPA during preparation of the Geology, Land Contamination and Waste Management Plan and will be set out in the Plan. This will include, for example, the consultations necessary to comply with the requirements or paragraphs 8.3.9 and 8.4.3 of the Code of Construction Practice which require the contractor to consult with SEPA regarding specific aspects of construction works.

83. The heading to section 8.3 includes “Minimisation” can you indicate which aspects cover minimisation and provide details?

The following parts of Section 8.3 cover and provide examples of the approaches to waste minimisation:

- Paragraph 8.3.1 – to consider opportunities and implement measures to reuse waste or surplus materials, as appropriate.
- Paragraph 8.3.1 – to have regard to the Sustainable Development Policy, as described in Section 1.8 of the Code of Construction Practice when considering the reuse of materials within the works.
- Paragraph 8.3.2 – provide recycling points and arrange for the appropriate disposal of waste to recycling stations.
- Paragraph 8.3.3 – maximise the environmental and development benefits from the use of surplus material.
- Paragraph 8.3.7 – handling, storing and managing waste to contain and limit impacts and avoid nuisance arising from dust.

84. What is the role of local authorities in relation to contaminated and hazardous materials?

The role of the local authorities will be in line with their statutory responsibilities which are set out in Planning Advice Note 33 Development of Contaminated Land, these responsibilities include:

- Contaminated land – identifying contaminated land, designating special sites, ensuring remediation of contaminated land and maintaining remediation registers of contaminated land. Local authorities have been consulted during development of the scheme. The contractor will, in line with normal practice as part of verifying baseline conditions, consult with local authorities regarding areas of contaminated land.
- Site investigations – local authorities will be consulted regarding site
investigations for areas of land affected by contamination (paragraph 7.5.3)

The majority of responsibilities relating to contaminated and hazardous materials lie with SEPA.

85. **What role does SEPA have in monitoring under this section and what reporting arrangements are made for contractors reporting to them?**

A specific project monitoring role is not set out in the Code of Construction Practice as there are strict requirements for the contractor to undertake monitoring as necessary to demonstrate compliance with the Code of Construction Practice, as required by paragraph 1.11.3. The contractor will consult with SEPA during construction works and monitoring information will be shared with them. The contractor will develop the procedures for consultation with SEPA and agree these with them, as referred to under point 82 above, during development of the Geology, Land Contamination and Waste Management Plan. If SEPA wish to undertake additional monitoring to that required by the Code of Construction Practice this will be accommodated.

86. **What information will be made publicly available and how will that be done?**

Information necessary as part of the community engagement and notification procedures set out in Section 2.3 of the Code of Construction Practice will be made available in accordance with the provisions of that section.

**Section 9 Protection of the Water Environment**

87. **Please confirm that the detail of this section and sections 7 and 8 have been agreed and approved by SEPA.**

As indicated previously, SEPA was consulted during preparation of the Code of Construction Practice. SEPA has provided a statement to the Scottish Parliament in their letter of 15 January 2010. In this letter they advise that “The Code of Construction Practice (CoCP) shows good commitment to pollution prevention proactive actions, providing method statements and surface water action plans. This should be a very useful document to assess actions prior to and during work on site”.

Two comments have been made regarding the following:

- Confirmation of the mitigation measures to minimise the release of fines during dredging operations – this information to be provided prior to application for authorisation.
- The protocol to ensure that no marine non-native species are introduced by plant/vessels during the construction phase.

With regards to release of fines during dredging, paragraph 9.5.18 and Section 9.7 of the Code of Construction Practice confirm that the contractor will apply for consent for dredging works in accordance with the Food and Environment Protection Act
1985. As part of gaining this consent, the contractor will develop and submit for approval the procedures and plant to be used for dredging works and demonstrate compliance with the Environmental Statement and Reports to Inform an Appropriate Assessment. Consultation with bodies including SEPA, SNH and Marine Scotland will also be undertaken. The Environmental Statement also describes measures to reduce the potential impact of dredging including:

- Taking measures to restrict dredging when other dredging works are being undertaken within 3km of the replacement crossing.
- Restricting dredging to one pocket at a time unless it is demonstrated to SEPA, SNH and Marine Scotland that the impacts of dredging more than one pocket at a time would not any additional impacts that would cause a significant impact from dredging.

The consent process described above will provide additional assurance that mitigation measures during dredging works will be acceptable and implemented and the works will not be able to be undertaken until this additional authorisation is provided.

The above measures are incorporated into the Code of Construction Practice by virtue of Section 1.4 which sets out the commitments to comply with the Environmental Statement.

With regards to preventing introduction of marine non-native species, the procedures to be followed will be developed by the contractor to comply with paragraph 10.4.3 of the Code of Construction Practice. This requires vessels to operate in accordance with industry recommended guidelines for preventing the introduction of non-native marine species. This paragraph further notes that UKMarineSAC (2009) recommends that vessels comply with International Maritime Organisation guidance wherever possible, seek guidance from the relevant navigation or harbour authorities port authority regarding areas where ballast water uptake should be avoided (e.g. near sewage outfalls), encourage the exchange of ballast water in the open ocean, and discourage/prohibit the unnecessary discharge of ballast water in port and harbour areas.

Further engagement will be undertaken with SEPA in relation to the matters raised in their statement to clarify the mitigation measures proposed and ensure they are content with the measures proposed for the scheme, including its construction. Any additional mitigation measures agreed with SEPA will be recorded on a commitments and undertakings register and will also be provided.

88. **What is the role of local authorities under this section?**

The local authorities will be consulted during preparation of the Surface Water and Groundwater Management Plan. Statutory responsibilities relating to the water environment are generally held by SEPA, SNH and Marine Scotland and these organisations will be involved to a greater degree than local authorities.
89. **What consultation is proposed under this section?**

The following consultation is proposed under this section:

- Paragraph 1.7.7 – the contractor will have to consult local authorities and other bodies during development of the Surface Water and Groundwater Management Plan.
- Paragraph 9.3.1 – the contractor will consult with SEPA regarding the measures to be implemented to contain and manage surface water run-off from the construction site.
- Paragraph 9.4.5 – the contractor will consult with local authorities and SEPA in relation to establishing and operating concrete and road surfacing material batching plants on site.
- Paragraph 9.4.5 – consultation with the relevant authorities (such as local authority, Scottish Water, SEPA etc) regarding discharging wash water from batching plants.
- Paragraph 9.5.1 – consultation with the relevant authorities (such as local authority, Scottish Water, SEPA etc) regarding connections to the local foul water and sewerage system.
- Paragraph 9.5.1 – consultation with SEPA regarding use of soakaways or foul drainage discharge outwith the public sewer.
- Paragraph 9.6.3 – consultation with SEPA regarding applications made in accordance with the Water Environment (Controlled Activities) (Scotland) Regulations 2005.
- Paragraph 9.7.2 – consultation with Marine Scotland regarding applications made in accordance with the Food and Environment Protection Act 1985.
- Paragraph 9.7.3 – consultation with relevant authorities such as the Crown Estates, Forth Ports plc, SNH, SEPA and Marine Scotland regarding dredging works and disposal of any arisings.
- Paragraph 9.8.2 – consultation with SEPA regarding use of SEPA’s Floodline Flood Watch service for works within river and tidal areas.
- Paragraph 9.9.1 – consultation with SEPA regarding water quality monitoring to be undertaken.
- Paragraph 9.9.5 - consultation with SEPA regarding the Pollution Incident Response Plan.

90. **What liaison is proposed under this section with locally affected bodies and persons?**

Consultation will be undertaken with the Crown Estate and Forth Ports regarding dredging works, as indicated above. The measures set out in the Environmental Statement and Code of Construction Practice are designed to prevent significant impacts on the water environment occurring. Local bodies or persons may be affected if a pollution incident occurred. In this instance, those parties affected would be contacted as soon as possible. It is unlikely that there would be effects on the water environment that would require notification in accordance with the procedures set out in Section 2.3 of the Code of Construction Practice.
91. Where are the emergency planning arrangements detailed? (see A2B 11.9)

The emergency planning arrangements are provided in Section 14 of the Code of Construction Practice. In addition to similar measures to those contained in the Airdrie to Bathgate scheme Code of Construction Practice covering spillages, information is provided in Section 14 regarding pollution prevention guidelines and monitoring procedures to be implemented during construction.

92. Please specify which watercourses are affected by the Bill.

It was not considered necessary to list watercourses which may be affected as the code of practice sets out measures and requirements for mitigating the effect of construction works rather than a list of affected areas. The potential residual impacts of the scheme on water bodies are described in Table 9.26 of the Environmental Statement. Watercourses that may be affected include:

- Firth of Forth
- Linn Mill Burn
- Swine Burn and a tributary of Swine Burn
- Niddry Burn and a tributary of Niddry Burn
- River Almond
- Ferry Burn
- Dolphington Burn

Residual impacts on watercourses are described in the Environmental Statement as being of negligible to slight significance.

Section 10 Ecology

93. Please confirm that the detail of this section has been agreed with SNH and RSPB.

As indicated previously, SNH was consulted during preparation of the Code of Construction Practice. The consultation prior to introduction of the Bill regarding the environmental measures sought the views of, and input from, regulatory bodies such as local authorities, SNH, SEPA, Historic Scotland and Marine Scotland. As such, RSPB were not consulted at that stage.

SNH has provided a statement to the Scottish Parliament in their letter of 26 January 2010. In this letter they advise that they "note the Code of Construction Practice and welcome our ongoing involvement in the development of this key document". SNH has made comments regarding environmental impacts and mitigation measures in their statement to the Scottish Parliament but has not provided adverse comment regarding the adequacy of the Code of Construction Practice. Further engagement will be undertaken with SNH in relation to the matters raised in their statement to clarify the mitigation measures proposed and ensure they are content with the measures proposed for the scheme, including its construction.

RSPB have objected to the Forth Crossing Bill as they consider that there is
“insufficient evidence provided to demonstrate that bird interests will not be adversely affected”. Although RSPB have not provided adverse comment on the Code of Construction Practice in their objection, they have made reference to construction matters and associated mitigation. In particular, they are concerned that Reports to Inform an Appropriate Assessment should be made available, referring to regulation 48(4) of the Conservation (Natural Habitats, &c.) Regulations 1994. The Scottish Ministers are currently progressing the Appropriate Assessments for the project through the normal separate authorisation process. As part of this process, advice is being sought from SNH. Regulation 48(4) requires the Competent Authority to, if they consider it appropriate, take the opinion of the general public; and if they do so, take such steps for that purpose as they consider appropriate. Further engagement will be undertaken with RSPB in relation to the matters raised in their objection to clarify the mitigation measures proposed and agree any additional measures that may be appropriate.

The requirement to provide specific mitigation measures listed in the Environmental Statement and Reports to Inform and Appropriate Assessment is brought into the Code of Construction Practice by virtue of Section 1.4. Any additional mitigation measures agreed with SNH and RSPB will be recorded on a commitments and undertakings register and will also be provided.

94. Please advise what monitoring and control arrangements are proposed for this section?

The extent and frequency of monitoring by the contractor will be that which is necessary to ensure, and be able to demonstrate compliance with the Code of Construction Practice, as stated in paragraph 1.11.3 of the Code of Construction Practice. The extent and frequency of monitoring is not stated as this provision requires the contractor to monitor to the extent that is necessary, rather than at a minimum extent or frequency which may not ensure the same compliance. In addition to this over-arching requirement, specific monitoring requirements are set out in Section 10.7 of the Code of Construction Practice as follows:

- Consultation with relevant authorities including the Scottish Ministers, SNH, local authorities and the Forestry Commission regarding monitoring and survey works to be undertaken prior to construction to verify the baseline ecological and arboricultural conditions set out in the Environmental Statement.
- Appropriate monitoring of construction works and implementation of mitigation measures, including those relating to noise and vibration associated with works which may affect the SPAs, SAC and SSSIs.
- Appropriate monitoring during construction to enable the effectiveness of construction methods and mitigation measures to be identified.

The level of monitoring of construction works and the effectiveness of mitigation measures for areas covered by the Reports to Inform an Appropriate Assessment will be extremely rigorous as it will be necessary to be able to ensure, and demonstrate, that the construction works do not have a significant effect on the qualifying interests of the Special Protection Areas and Special Area of Consultation.
at the Forth.

The specific control measures necessary, depending on the contractor’s construction methods and programme, will be set out in the Ecological Management Plan which will be developed in consultation with SNH, SEPA and Marine Scotland, as stated in paragraph 10.2.10 of the Code of Construction Practice. Species management plans will also be prepared covering terrestrial habitats, aquatic/estuarine habitats, European Protected Species (cetaceans, great crested newt, otter and bats), badger, breeding birds and freshwater fish, including migratory species, as stated in paragraph 10.2.4 of the Code of Construction Practice.

Certain activities will require separate licensing, including works which would affect cetaceans, great crested newt, otter, bats and badgers. Preparation of licences and consultation with SNH is progressing.

The contractor will provide an Ecological Clerk of Works, Marine Mammal Observer and arboricultural consultant to input to the development, implementation and supervision of the mitigation measures to be provided during construction.

95. **Please indicate who is accountable for ecology aspects once the Bill is passed?**

The Scottish Ministers will retain overall responsibility for compliance with the Environmental Statement, Appropriate Assessments and Code of Construction Practice. Responsibility for undertaking the works in accordance with these documents will be assigned to the contractor through the construction contracts. The contractor will be responsible if there are any offences in relation to environmental legislation as the person undertaking the construction activities.

96. **What consultation is proposed for this section and with whom?**

The following consultation is proposed under this section:

- **Paragraph 1.7.7** – the contractor will have to consult local authorities and other bodies during development of the Ecological Management Plan.
- **Paragraph 10.2.10** – the contractor will consult with SNH, SEPA and Marine Scotland, as appropriate, regarding preparation of the Ecological Management Plan.
- **Paragraph 10.3.5** – the contractor will consult with relevant bodies, including SNH, prior to work commencing regarding the need or otherwise for an Appropriate Assessment and/or additional and/or amended mitigation measures if their construction methods differs from that assessed in and recommended by the Environmental Statement and the Reports to Inform an Appropriate Assessment and if, in the view of the Ecological Clerk of Works, the works has the potential to significantly affect protected habitats and/or species.
- **Paragraph 10.3.6** – consultation will be undertaken in respect of any separate licences required.
- **Paragraph 10.4.3** – the contractor will seek guidance from the relevant navigation or harbour authorities port authority regarding areas where ballast water uptake
should be avoided.

- Paragraph 10.7.1 - the contractor will consult with relevant authorities including the Scottish Ministers, SNH, local authorities and the Forestry Commission regarding monitoring and survey works to be undertaken prior to construction to verify the baseline ecological and arboricultural conditions set out in the Environmental Statement.

97. **Please define for the purposes of this section “mature trees”**

Section 10.5 of the Code of Construction Practice applies to all trees and not just mature trees as was the approach taken in the Airdrie to Bathgate scheme Code of Construction Practice. It is not, therefore considered necessary in the Code of Construction Practice to define mature trees. British Standard BS5837, Trees in Relation to Construction, provides guidance that tree surveys should consider all those with stem diameter greater than 75mm measured at 1.5m above ground level but that an arboriculturist should identify relevant trees. This is reflected in paragraphs 10.5.1 and 10.5.2 of the Code of Construction Practice which requires an arboricultural consultant to be employed and protection of trees to be in line with British Standard BS5837.

98. **Please explain why all trees are not covered by 10.5.6.**

All works relating to trees require input from an arboricultural consultant and protection measures are necessary in accordance with Section 10.5 of the Code of Construction Practice for all trees. Paragraph 10.5.6 provides additional emphasis on the need to consider individual stands of trees in additional to blocks of woodland adjacent to the scheme but does not detract from the applicability of Section 10.5 to all trees. In particular, paragraph 10.5.6 sets out specific mitigation relating to the possible effects of windthrow on stands of woodland. There can be a risk of windthrow in some situations where stands of woodland and forests are felled and this is reflected by the specific reference to stands in this paragraph.

99. **Please indicate what the policy for replacing felled trees is?**

Where trees within the Act limits are felled, planting to mitigate impacts will be provided in accordance with the Environmental Statement. The mitigation proposals are shown on Figures 12.4a – 12.4n of the Environmental Statement. Where land is to be used temporarily, Section 42(2) of the Forth Crossing Bill does not require vegetation to be replaced. Compensation provisions associated with works to trees are covered by Section 52 of the Forth Crossing Bill. The Scottish Ministers may, if agreed with the relevant landowner, agree to provide replacement planting in lieu of compensation, but this will be determined on an individual basis if the case arises.

The contractor is required to protect trees in accordance with Section 10.5 of the Code of Construction Practice. If works to trees outside the Act limits are undertaken in accordance with Section 10 of the Forth Crossing Bill, the compensation provisions in Section 52 of the Forth Crossing Bill will apply. If trees outside the Act limits are damaged, the relevant landowner will be consulted with regards to the
compensation to be provided, involving either replacement planting or monetary compensation.

100. *In 10.6.1 please explain why the 2 year post working limit as utilised in A2B (12.7) has not been followed.*

The two year limit has not been used as it is an essential part of the compensation procedures explained under point 99 above that they may be implemented where it can be demonstrated that trees are damaged or lost due to construction works, even if this is outside the two year limit. In this instance the normal provisions concerning limitations to the application of statutes would apply, being 5 years following completion of the works.

**Section 11 Agricultural Resources**

101. *Please detail the proposed consultation arrangements for the management plan.*

In line with the requirements of paragraph 1.7.7 of the Code of Construction Practice, the contractor will have to consult local authorities and other bodies during development of the Agriculture Management Plan. The requirements of the Code of Construction Practice also include that the works will be undertaken in accordance with guidance produced by the Scottish Government Rural Payments and Inspections Directorate in relation to undertaking works on or adjacent to agricultural land (paragraph 11.3.1) and also that the contractor will comply with the Directorate’s, and other appropriate guidance, to avoid, as far as possible, the spread of soil borne, crop and animal diseases. The contractor will need to consult with the Directorate on these matters when developing the Agriculture Management Plan.

102. *What notice period is to apply to section 11.2.4?*

The notification procedure set out in Section 2.3 of the Code of Construction Practice will apply to all works which may affect adjacent residents. Notwithstanding this, a minimum of five days notice will be provided to landowners of the intention to take entry to land which has been acquired, and is therefore owned by the Scottish Ministers, for the project. If the Scottish Ministers wish to take advance entry to land following notice of making a General Vesting Declaration, Section 40(1)(a) of the Bill provides that 28 days notice is required.

Specific provisions included in the Forth Crossing Bill with regards to notice of taking entry to land which is to be occupied temporarily or used only for survey works are as follows:

- Temporary possession – 28 days (Section 40(1)(a) of the Forth Crossing Bill)
- Survey works – 7 days (Section 40(1)(b) of the Forth Crossing Bill)

The contractor will agree the timescale for providing accommodation works for adjacent landowners with them prior to the works being undertaken.
103. *When is the liaison under 11.3.11 to occur?*

The notification procedure set out in Section 2.3 of the Code of Construction Practice will apply to all works which may affect adjacent residents. Matters relating to water supply will typically be covered as accommodation works and as such the contractor will agree the timescale for providing accommodation works for adjacent landowners with them prior to the works being undertaken. Where alternative livestock water supplies are necessary these will be provided before current supplies are disrupted.

**Section 12 Archaeology and Cultural Heritage**

104. *Please confirm that the details of this section have been agreed with Historic Scotland.*

As indicated previously, Historic Scotland was consulted during preparation of the Code of Construction Practice. Whilst no comment was received in response to this it is noted that the statement from Historic Scotland to the Scottish Parliament dated 22 January 2010 does not contain adverse comments regarding the Code of Construction Practice.

105. *What consultation arrangements are proposed for the Management Plan including the involvement of local authorities and land owners?*

In line with the requirements of paragraph 1.7.7 of the Code of Construction Practice, the contractor will have to consult local authorities and other bodies during development of the Cultural Heritage Management Plan. The requirement to consult with Historic Scotland is also referred to in paragraph 12.2.4 of the Code of Construction Practice.

The Cultural Heritage Management Plan will also set out the consultation procedures to be implemented during construction works. Particular requirements include:

- Paragraph 12.3.3 – consulting with Historic Scotland should any archaeological or cultural heritage finds or sites be discovered or revealed during construction to enable appropriate measures to be implemented to mitigate potential impacts.
- Paragraph 12.3.5 – agreeing with Historic Scotland the nature, extent and frequency of monitoring.
- Paragraph 12.3.6 – consulting with Fife Council Bereavement Services

The works will be undertaken within the Act limits and the majority of the land will be acquired and will be in the ownership of the Scottish Ministers. Where archaeological investigations or works to protect listed buildings are required on land which is to be occupied temporarily or outside the Act limits, landowners will be consulted and entry to land will be taken in accordance with Section 40 of the Forth Crossing Bill, as outlined under point 102 above.

The notification procedure set out in Section 2.3 of the Code of Construction Practice
will also apply to works which may affect adjacent residents.

106. *Please explain why Historic Scotland are not being involved in completion, implementation and monitoring of the plan.*

As explained under point 105 above, Historic Scotland is involved in the development of the Cultural Heritage Management Plan and also in agreeing the nature, extent and frequency of monitoring.

107. *Please detail what procedure will apply should Historic Scotland not agree with proposed measures under 12.3.3.*

Paragraph 1.4.2 of the Code of Construction Practice requires the contractor to provide the mitigation measures described in the Environmental Statement, or any other appropriate or equivalent mitigation measures, such that the residual environmental impacts during construction and operation of the Project are in line with those described in the Environmental Statement. The contractor will, therefore, have to be able to demonstrate to Historic Scotland that the measures proposed to satisfactorily address the matters covered by paragraph 12.3.3.

As noted in Historic Scotland’s statement to the Scottish Parliament dated 22 January 2010, they are advisors to the Scottish Ministers on the historic environment. If Historic Scotland is not content that the contractor’s proposals comply with the Environmental Statement, that aspect of the works would not be permitted to progress and the Scottish Ministers would require the contractor to develop alternative mitigation measures such that Historic Scotland were content that the requirements of the Forth Crossing Bill concerning environmental impact and paragraph 1.4.2 of the Code of Construction Practice were being met.

**Section 13 Landscape and Visual**

108. *Please confirm that the details of this section have been agreed with SNH and local authorities.*

As indicated previously, SNH was consulted during preparation of the Code of Construction Practice.

SNH has provided a statement to the Scottish Parliament in their letter of 26 January 2010. In this letter they advise that they “note the Code of Construction Practice and welcome our ongoing involvement in the development of this key document”. SNH has made comments regarding environmental impacts and mitigation measures in their statement to the Scottish Parliament but has not provided adverse comment regarding the adequacy of the Code of Construction Practice. Further engagement will be undertaken with SNH in relation to the matters raised in their statement to clarify the mitigation measures proposed and ensure they are content with the measures proposed for the scheme, including its construction.

The requirement to provide specific mitigation measures listed in the Environmental
Statement and Reports to Inform an Appropriate Assessment is brought into the Code of Construction Practice by virtue of Section 1.4. Any additional mitigation measures agreed with SNH will be recorded on a commitments and undertakings register and will also be provided.

Also as indicated previously, The City of Edinburgh Council, Fife Council and West Lothian Council were consulted during preparation of the Code of Construction Practice. The City of Edinburgh Council and Fife Council both provided a response to the consultation but neither provided comments regarding this section.

The City of Edinburgh Council has also submitted a statement to the Scottish Parliament dated 26 January 2010 and has also submitted an objection. Although the objection includes points regarding the Code of Construction Practice, these do not relate to this section.

109. **What consultation arrangements are proposed for the Management Plan including the involvement of local authorities land owners and the local public?**

In line with the requirements of paragraph 1.7.7 of the Code of Construction Practice, the contractor will have to consult local authorities and other bodies during development of the Landscape Management Plan. This requirement is also reflected in paragraph 13.2.4 of the Code of Construction Practice. The contractor is also required by paragraph 13.3.11 of the Code of Construction Practice to consult with SNH, relevant local authorities, the airport operator of Edinburgh Airport, community councils and adjacent landowners, as appropriate, regarding the landscaping and planting proposals.

Paragraph 13.2.2 of the Code of Construction Practice refers to the requirement for the Landscape Management Plan to include the measures to be implemented to prevent damage to the landscape adjacent to the construction site by the movement of construction vehicles and machinery. If damage does occur to the landscape adjacent to the construction site, landowners will be consulted and entry to land will be taken in accordance with Section 40 of the Forth Crossing Bill, as outlined under point 102 above.

110. **Please explain why SNH are not being involved in completion, implementation and monitoring of the plan.**

In line with the requirements of paragraph 1.7.7 of the Code of Construction Practice, the contractor will have to consult local authorities and other bodies during development of the Landscape Management Plan. These bodies include SNH. This requirement is also reflected in paragraph 13.2.4 of the Code of Construction Practice. The contractor is also required by paragraph 13.3.11 of the Code of Construction Practice to consult with SNH, relevant local authorities, the airport operator of Edinburgh Airport, community councils and adjacent landowners, as appropriate, regarding the landscaping and planting proposals.

A specific project monitoring role is not set out in the Code of Construction Practice...
as there are strict requirements for the contractor to undertake monitoring as necessary to demonstrate compliance with the Code of Construction Practice, as required by paragraph 1.11.3. The contractor will consult with SNH during construction works and monitoring information will be shared with them. The contractor will develop the procedures for consultation with SNH and set these out in the Landscape Management Plan. If SNH wish to undertake additional monitoring to that required by the Code of Construction Practice this will be accommodated.

Please also refer to the response under item 108 regarding consultation undertaken with SNH during the development of the Code of Construction Practice and their statement to the Scottish Parliament regarding the Forth Crossing Bill, including the Code of Construction Practice.

111. **Please detail what happens if SNH or others do not agree with proposed measures under this section.**

Paragraph 1.4.2 of the Code of Construction Practice requires the contractor to provide the mitigation measures described in the Environmental Statement, or any other appropriate or equivalent mitigation measures, such that the residual environmental impacts during construction and operation of the Project are in line with those described in the Environmental Statement. The contractor will, therefore, have to be able to demonstrate to SNH that the measures proposed in accordance with this section of the Code of Construction Practice are adequate.

If SNH is not content that the contractor’s proposals comply with the Environmental Statement, that aspect of the works would not be permitted to progress and the Scottish Ministers would require the contractor to develop alternative mitigation measures such that SNH were content that the requirements of the Forth Crossing Bill concerning environmental impact and paragraph 1.4.2 of the Code of Construction Practice were being met.

The same sanctions will apply if other parties demonstrate to the Scottish Ministers that construction of the project is not in accordance with the Environmental Statement or Code of Construction Practice.

112. **Who is responsible for ensuring compliance with the plan?**

Paragraph 1.2.4 of the Code of Construction Practice imposes a requirement on the Scottish Ministers to ensure compliance with the Code of Construction Practice through the construction contracts. The Scottish Ministers will therefore retain overall responsibility for compliance with this document and also the Environmental Statement. Responsibility for undertaking the works in accordance with these documents will be assigned to the contractor through the construction contracts.

Paragraph 1.4.2 of the Code of Construction Practice requires the contractor to provide the mitigation measures described in the Environmental Statement, or any other appropriate or equivalent mitigation measures. These measures include the Environmental Management Plan and its subsidiary plans. Mitigation measures also
include the requirement for monitoring. This is explained in paragraph 1.11.3 of the Code of Construction Practice which requires the contractor to undertake monitoring as may be necessary to comply with the requirements of the Code of Construction Practice, including monitoring the effectiveness of mitigation measures and monitoring to enable compliance with the requirements of the Code of Construction Practice to be demonstrated. The contractor will therefore have to be able to demonstrate compliance with the Environmental Management Plan and its subsidiary plans.

Section 14 Pollution Incident Control and Response Planning

113. Please confirm SEPA are content with this section.

As indicated previously, SEPA was consulted during preparation of the Code of Construction Practice. SEPA has provided a statement to the Scottish Parliament in their letter of 15 January 2010. In this letter they advise that “The Code of Construction Practice (CoCP) shows good commitment to pollution prevention proactive actions, providing method statements and surface water action plans. This should be a very useful document to assess actions prior to and during work on site”. Two comments have been made regarding the Code of Construction Practice but these do not relate to this section.

The Bill Provisions

114. Please explain why section 68(3) of the Bill does not require consultation with all parties affected by the proposed change.

The bodies listed in Section 68(3) of the Forth Crossing Bill include the mandatory consultees for Hybrid Bills, roads authorities and community representative groups. These organisations have statutory responsibilities relating to the matters covered by the Code of Construction Practice and representation for the public. The consultation would therefore cover parties who represent those whose interests may be affected by any amendments to the Code of Construction Practice

Section 68(1) of the Forth Crossing Bill prohibits any amendment of the Code of Construction Practice which reduces the standard of mitigation and protection provided for in the document being replaced. All parties identified whose interests could be affected by the scheme were consulted following introduction of the Forth Crossing Bill and have been afforded the opportunity to make representations to the Scottish Parliament. As amendments to the Code of Construction Practice made in accordance with Section 68 would not reduce the level of protection, and would most likely increase the level of protection, it is not considered that the interests of any parties would be adversely affected. In view of this, the list of consultees was restricted to those who had specific statutory responsibilities.
115.  Please explain why the Bill does not provide local authorities with powers to enforce section 67 as if they were planning conditions.

In the Airdrie to Bathgate project, Independent Planning Monitoring Officers were appointed with powers to enforce implementation of environmental mitigation measures and compliance with the Code of Construction Practice, Noise and Vibration Policy and Mitigation Commitments documents. However section 1.13 of the Airdrie to Bathgate Code of Construction Practice further defines that the role of the Independent Planning Officer is not to duplicate the compliance regime implemented by the Promoter but that the Officer will have full visibility of the project compliance regime and participate in joint monitoring activities. This information and opportunity will be provided to local authorities and other regulatory bodies, should they wish, to assist them fulfil their statutory obligations.

The Scottish Ministers have an obligation to ensure the works are undertaken in accordance with the Environmental Statement, Appropriate Assessments and Code of Construction Practice. As the Scottish Ministers will have an experienced site team in place, they do not consider that they require additional oversight from local authorities through an Independent Planning Monitoring Officer to ensure that the construction works comply with these requirements. This is consistent with the approach taken on all other major trunk road infrastructure projects in Scotland.

Please also refer to our response under Point 1 above.

I trust that the above adequately responds to the Committee’s queries. However, should you require any further information, please do not hesitate to contact me.

Yours sincerely,

Frazer Henderson
Bill Manager
Briefing for the Forth Crossing Bill Committee

Forth Crossing Bill: Analysis of Pre-Legislative Consultation

Introduction

This short briefing outlines the generally agreed principles of effective public consultation. It then summarises the consultation with communities, residents and other interested parties undertaken by Transport Scotland on the proposed Forth Crossing since 19 December 2007, the date that Ministers announced the location and type of crossing to be built, until 16 November 2009 when the Forth Crossing Bill was introduced to the Scottish Parliament.

The briefing goes on to outline pre-approval consultation undertaken on the M74 completion project and Airdrie-Bathgate Railway project and contrasts these with the consultation undertaken on the Forth Crossing project. It then highlights issues around consultation that members may wish to raise with witnesses during their consideration of the Forth Crossing Bill.

It finally highlights issues raised regarding consultation on the Forth Crossing by other interested parties.

Effective Consultation

The Scottish National Standards for Community Engagement were launched by the Scottish Community Development Centre in May 2005. These ten standards have been incorporated into the Scottish Government’s Planning Advice Note 81: Community Engagement – Planning with People, which sets out best practice for community engagement by developers and planning authorities. The 10 standards are:

1. Identify and involve the people and organisations who have an interest in the focus of the engagement.
2. Identify and overcome any barriers to involvement.
3. Gather evidence of need and resources to agree purpose, scope and actions.
4. Agree and use methods of engagement that are fit for purpose.
5. Agree and use clear procedures that enable participants to work together effectively and efficiently.
6. Ensure necessary information is communicated between the participants.
7. Work effectively with others with an interest.
8. Develop the skills, knowledge and confidence of the participants.
9. Feed results back to the wider community and agencies affected.
10. Monitor and evaluate whether engagement achieves its purpose and meets the national standards for community engagement.

The policy memorandum which accompanies the Bill makes it clear that the pre-legislative consultation on the Forth Crossing is based around the advice in PAN 81.

**Forth Crossing: Consultation with Communities, Residents and Other Interested Parties**

There is no legislation, guidance or regulation setting out how the Scottish Government/Transport Scotland should undertake pre-legislative consultation on a project such as the Forth Crossing. Given the once in a generation nature of such a project Transport Scotland has effectively had to invent a unique consultation process, which it has chosen to base on existing standards established by the Scottish Government for the town and country planning system.

Transport Scotland set out its strategy for engaging with communities, residents and other interested parties in *Forth Replacement Crossing: Engaging With Communities*, which was published in September 2008. The publication of this document came some eight months after the announcement of the location of the Crossing, during which time a considerable amount of public consultation had already taken place.

Since December 2007, Transport Scotland has provided information to interested parties through electronic and printed newsletters, information leaflets, community information points located in public libraries and a dedicated website. In addition they have held over 40 meetings and briefing sessions with community councils, community groups, residents and residents groups, business and industry groups and elected representatives.

Transport Scotland also arranged a series of public information exhibitions at 12 locations over 11 days during January 2009. A total of 212 responses were received following these exhibitions, a response rate of less than 10% of those who attended. A summary of comments made by visitors to the exhibitions was published by Transport Scotland as *Forth Replacement Crossing Public Information Exhibitions: Feedback and Outcomes Report* during June 2009, with a further *Annex* published in November 2009.

In addition, Transport Scotland has established a dedicated telephone enquiry line and deal with written and email correspondence. Responses to such enquiries are meant to be issued within 20 working days of receipt.

**The M74 Completion Project**

The M74 completion project, currently under construction and due to open in 2011, involves the construction of a five mile long, three-lane motorway with hard shoulders in the south side of Glasgow between Fullarton Road junction near Carmyle to the M8 motorway just west of the Kingston Bridge. The
project is being managed by Transport Scotland on behalf of Scottish Ministers.

The pre-authorisation consultation process for the M74 began in May 2002, when a dedicated project web-site was launched along with a telephone helpline.

Leaflets explaining various aspects of the scheme and the statutory processes have been produced and widely distributed during the development of the project, copies were also made available in public libraries and a number of council offices in Glasgow, South Lanarkshire and Renfrewshire.

During the development of the scheme, public exhibitions were held on 23 to 26 September 2002 in Rutherglen, Govanhill and Pollokshields to illustrate the developing proposals for the project. At these exhibitions comments were invited from the public. Over 1650 people attended the exhibitions.

Public exhibitions were held from 25 to 29 March 2003 to illustrate the final proposal. These exhibitions coincided with the commencement of the statutory process. In addition, advertisements were placed in local streets in the vicinity of the proposed route. Over 1600 people attended these exhibitions.

Airdrie-Bathgate Railway Project

The Airdrie-Bathgate Railway project is currently under construction and is due to open in December 2010. The project was authorised by the Airdrie Bathgate Railway and Linked Improvements Act 2007 and involves the improvement of the existing railways between Newbridge and Bathgate and Airdrie and Drumgelloch plus the re-construction of a 15 mile stretch of railway between Bathgate and Drumgelloch.

As with the Forth Crossing project, there is no legislation, guidance or regulation setting out how the promoters of the Airdrie-Bathgate railway project should undertake pre-legislative consultation.

The promoters of the railway, Network Rail, undertook a pre-legislative consultation programme similar to that pursued by Transport Scotland for the Forth Crossing. Public consultation was formally launched on 20 February 2004 with a media conference and the launch of a dedicated website and telephone information line. The aim was to answer all enquiries as soon as they were received, or as quickly as possible in the case of more complex queries. The average time to respond to a detailed enquiry was five days.

Public exhibitions were held in Airdrie and Livingston during March 2004. Further public exhibitions were held at 10 locations along the route during January 2006. Information leaflets and posters relating to the proposals were distributed to residents and displayed in public buildings along the line prior to the meetings.
In addition to the exhibitions, a series of four public meetings were held in towns along the route during March and April 2004. A further seven public meetings were held at locations along the route during January and February 2006. These meetings allowed interested parties to directly question senior officers from Network Rail and other key stakeholders on the project.

**Comparison of the Forth Crossing, M74 and Airdrie Bathgate Railway Pre-Authorisation Consultation Exercises**

The two pre-authorisation consultation exercises described above, chosen because they represent the two largest transport infrastructure projects currently underway in Scotland, are striking for their similarity to each other and to the process undertaken for the Forth Crossing project.

All three projects have used a range of information and consultation channels/techniques, including a project website, telephone helpline, leaflets/newsletters delivered to residents and displayed in public buildings and public exhibitions and meetings held within affected communities.

In its consideration of the pre-legislative consultation undertaken by Network Rail on the Airdrie-Bathgate Railway project the Bill Committee stated:

> "While broadly the promoter appears to have carried out an effective consultation, we were interested in any innovative ways it had adopted to gather views on the project. All of the evidence submitted to us appeared to indicate that this consultation was consistent with that for other similar projects but there was no particularly imaginative or new way of engaging with local people."

While no such independent analysis of the M74 consultation is available, given its similarity to the Airdrie-Bathgate Railway consultation exercise it would seem reasonable to assume that it was similarly competent without involving any real innovation. With this in mind, members may wish to raise some of the following issues with Transport Scotland and local residents, with a view to assessing how effective the Forth Crossing consultation exercise has been in practice, rather than as a paper exercise:

**Members of the Committee May Wish to Consider the Following Issues**

- How Transport Scotland identified the community groups and residents it needed to engage with
- How Transport Scotland has attempted to engage with more difficult to reach groups, e.g. people that are unable to attend public meetings or exhibitions, people unable to access the internet, people with poor English, disabled people and the elderly
- How Transport Scotland chose the methods of consultation used and rejected others, e.g. surveys, door-to-door visits, informal community surgeries

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1 Paragraph 162, Preliminary Stage Report on the Airdrie-Bathgate Railway and Linked Improvements Bill
• How Transport Scotland assisted residents and communities to develop the skills necessary to take part in the consultation process
• How the results of the consultation and engagement have been fed back to those who have taken part by Transport Scotland
• What monitoring Transport Scotland has undertaken to ensure that the consultation and engagement programme has met the National Consultation Standards

Views of Other Interested Parties

While there is no independent analysis of the effectiveness of the Forth Crossing consultation exercise, this issue has been raised by members of the Transport, Infrastructure and Climate Change Committee on at least two occasions. At the Transport, Infrastructure and Climate Change Committee meeting of 23 June 2009 Margaret Smith MSP stated:

“Many of my constituents tell me that they ask questions but do not get answers. They feel that Transport Scotland just gives them information at briefings or meetings, which does not feel like being part of a genuine consultation “

While at the same meeting, Shirley-Anne Somerville MSP said:

“The telephone inquiry line has been mentioned as an example of good engagement. There is indeed such a phone line, but when people call, they do not feel that they are speaking to someone who will answer their query. I have also had comments about the sheer length of time that it takes to get an answer to correspondence, and then most people are not happy with the clarity of the decision. I am not suggesting that the people who are affected by the project will always be entirely happy with the answers that they get, but it would certainly be good if the letters and phone calls were such that they could understand the answers that they get and their implications.

I urge caution about using the telephone line as a great example of public engagement. The feedback that I have been getting is that people are not impressed when they use it.“

Alan Rehfisch
Senior Research Specialist
February 2010