

LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 5 September 2006

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

20th Meeting 2006, Session 2

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

Dr Sylvia Jackson (Stirling) (Lab)

*Paul Martin (Glasgow Springburn) (Lab)

*David McLetchie (Edinburgh Pentlands) (Con)

*Michael McMahon (Hamilton North and Bellshill) (Lab)

*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*Tommy Sheridan (Glasgow) (Sol)

*Ms Maureen Watt (North East Scotland) (SNP)

COMMITTEE SUBSTITUTES

Mr Bruce McFee (West of Scotland) (SNP)

John Farquhar Munro (Ross, Skye and Inverness West) (LD)

Dr Elaine Murray (Dumfries) (Lab)

Murray Tosh (West of Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Jackie Baillie (Dumbarton) (Lab)

James Fowle (Convention of Scottish Local Authorities)

John Halliday (Strathclyde Partnership for Transport)

Ewan MacLeod (Shepherd and Wedderburn)

Tricia Marwick (Mid Scotland and Fife) (SNP)

Councillor Chris Thompson (South Lanarkshire Council)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 4

Scottish Parliament

Local Government and Transport Committee

Tuesday 5 September 2006

[THE CONVENER *opened the meeting at 14:02*]

Item in Private

The Convener (Bristow Muldoon): I call this meeting of the Local Government and Transport Committee to order. I welcome colleagues back after the summer recess. Today we have before us a major piece of proposed legislation, the Transport and Works (Scotland) Bill, but before we begin, we must consider whether to take in private agenda item 6, which is to consider a paper on how we should tackle the bill and on potential organisations and individuals that we may want to invite as witnesses. Do members agree to discuss that paper in private?

Members indicated agreement.

The Convener: I have received apologies from Sylvia Jackson.

Transport and Works (Scotland) Bill: Stage 1

14:03

The Convener: Agenda item 2 is stage 1 consideration of the Transport and Works (Scotland) Bill. I welcome Tricia Marwick MSP and Jackie Baillie MSP, who both have recent experience of convening committees that dealt with major public transport infrastructure projects—such projects are part of the reason why the bill has been introduced. I look forward to their sharing their experiences as conveners of those committees and, I hope, informing our consideration of the bill. I hand over to them to make any introductory remarks.

Tricia Marwick (Mid Scotland and Fife) (SNP): I am happy just to answer any questions.

Jackie Baillie (Dumbarton) (Lab): Likewise, convener. It is a pleasure to be here. It will probably surprise none of the members that both Tricia Marwick and I are extremely keen on the bill that is before the committee, as we have had experience of the alternative.

David McLetchie (Edinburgh Pentlands) (Con): For the record, and for the purposes of compiling our report, will you say what amount of time was devoted to the respective bills that you dealt with at their various stages? Having regard to the analysis of the proposed new measures relative to the present procedures, what do you envisage will be the parliamentary time saving and the process time saving from the standpoint of the promoters of projects?

Tricia Marwick: The Waverley Railway (Scotland) Bill Committee met for almost three parliamentary years to consider the private bill, which made it one of the longest running private bill committees. There were problems with the private bill—not least with the rushed way in which the promoter introduced it. The bill was not ready to be in the Parliament. We also had problems with land referencing and objectors, which delayed the bill for a further six months. The task was extremely onerous. When we took evidence, we met most Mondays during the period. I am sorry, but I cannot say exactly how many committee meetings we had at the various stages—it was a bit of a blur at times. The evidence sessions were extremely hard and most of them lasted all day.

My biggest criticism of the present procedure is that it is extremely complicated. Not many members of the Scottish Parliament have the necessary technical expertise to deal with such matters. We were dependent a great deal on the advice of the clerks and the technical experts who

were brought in to advise us. The proposed new process will be a lot cleaner and will cut down MSPs' involvement. If I can speak as the former Scottish National Party business manager, I know the difficulty that my party has had in proposing members for future private bill committees as a result of the experiences that some members had on previous private bill committees. It goes without saying that I am in favour of a streamlined system.

I must ask the question that I keep asking but which has never been answered: why is our method of dealing with rail projects different from the way in which we deal with road projects? If we dealt with rail projects in the same way as we dealt with road projects, would we need the Transport and Works (Scotland) Bill? That should be considered further. The processes that are laid down in the bill are a vast improvement on the current system, but I question slightly whether there will be sufficient parliamentary involvement. Perhaps we could explore further whether we need a system that is similar to the one that we have for building roads.

Jackie Baillie: The new bill is absolutely right in removing the biggest chunk of time, which is the consideration stage of the private bill process. The Edinburgh Tram (Line One) Bill Committee had about 150 objections from articulate individuals, all of which had to be considered, individually and collectively. Those 150 objections took in excess of 100 hours of parliamentary scrutiny.

Tricia Marwick touched on the issue of complexity. I now consider myself an expert on patronage, demand modelling, water-flow issues and the difference between L_{Amax} and L_{Aeq} in describing noise, but that is not the kind of knowledge that MSPs bring with them to the Parliament. A huge degree of complexity is involved in private bills and I am not convinced that MSPs are best placed to work their way through that. We rely on expert opinion, as do the objectors, but an enormous amount of time is still consumed in the process. Objectors must provide witness statements and rebuttals of other statements. The process consumes a huge volume of time, not just for the Parliament and parliamentarians, but for objectors. The bill offers a much more balanced and sensible approach to dealing with transport projects.

David McLetchie: You have mentioned the front end, or parliamentary scrutiny, and the back end, or parliamentary approval. The bill proposes that members will have to vote on an affirmative resolution on proposals that are of national significance. Is that proposition limited to transport projects promoted under the bill or is it a general proposition that will apply to all projects that are considered to be of national significance? Do you think that it should apply to nationally significant projects?

Tricia Marwick: I am not sure that I can answer your questions because I am not sure what the Executive's thoughts are.

I have never yet had defined for me what "national significance" means. Are the Borders railway line, the Edinburgh tramlines or the proposed Bathgate to Airdrie line of national significance? I do not know. The term confuses me because, as I understand it, only transport projects that are of national significance will come back to the Parliament to be subject to the affirmative procedure.

David McLetchie: Should national significance be partly defined by the amount of public money that is committed to a project even though it might have only a localised benefit?

Tricia Marwick: That is one way of defining it, but we need a definition that we can all understand and sign up to. With respect, it is necessary that the committee manages to get Executive ministers to identify what the term means when they appear before you. We need to understand what national significance means before the bill is finally approved. MSPs need to know what we will be signing up to.

David McLetchie: Does Jackie Baillie think that her project—Edinburgh tramline 1—is of national significance?

Jackie Baillie: There is no yes-or-no answer to that. I agree with Tricia Marwick that absolutely clear criteria need to be spelled out, whether in Parliament or through the national planning framework. I understand that transport projects of national significance will need to be identified as part of the national planning framework. I would have thought that a reasonable way of measuring transport projects would not just be by their cost, but—more significant—their economic impact as part of the infrastructure not just of a city region, but of Scotland as a whole. I hope that there will be such criteria, but whether they are part of the bill or more properly part of the criteria for establishing what is in the national planning framework is something about which we want to ask ministers.

I am reasonably comfortable that Parliament's time should not be spent on localised projects that will have an undoubted benefit in their local area but are not of great national significance and can be left at a local level.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): As a preface to my remarks, I note that the Scottish Parliament information centre briefing on the bill says on page 3 that if the scheme is of national significance it will be subject to parliamentary approval—that means projects identified in the national planning framework.

I share your view that the current system is unsustainable and that we cannot carry on with it because it is not right or practical. However, I get a little concerned about the amount of power that we give to the Scottish ministers. I feel that we give them too much power and that Parliament loses control, as it were. Now here we are thinking about moving the business of approving transport projects from parliamentary to ministerial control. Although we recognise that the current system is wrong and unsustainable, has the Scottish Executive proposed the most appropriate way forward?

14:15

Jackie Baillie: It has. It is not about who has the ultimate control—you should remember that, according to the parliamentary process, the Parliament will still be required to sign off projects at the beginning as we do currently when we are asked to approve the general principles of a bill. We ask ourselves whether we think that a project is right, given the bill that is before us. That aspect would not be removed from the Parliament.

At the moment, the Parliament has control over the middle part of the process, in that a committee of MSPs pores over the fine detail of competing claims and consults experts—there are experts on both sides, although they are predominantly on the promoter's side. I believe that handing over that control to an independent reporter who is skilled at dealing with such matters would represent an appropriate loss of control for the Parliament and that it would be right to park responsibility for that part of the process with an independent reporter on behalf of the Executive.

It is appropriate for a national body such as the Parliament to have regard to projects of national significance and it is proper that such projects should come back to the Parliament for approval. Apart from projects that affected my constituency, in which case some regional consideration might be appropriate, I would not be interested in other transport projects being subject to parliamentary approval.

If we are honest, the Parliament's ability to engage with highly technical subjects that have defied the comprehension of even the MSPs who have listened to hundreds of hours of evidence is limited, as I found out during the final stage debate on the Edinburgh Tram (Line One) Bill, when I attempted to lecture members on the merits of one noise policy over another. That was hard work. Members were trying to learn about the subject in the space of an afternoon and I saw their eyes glaze over. That is not a good way to proceed. The proposals in the Transport and Works (Scotland) Bill are proportionate and do not represent a loss of control.

Tricia Marwick: I have a slight concern that the proposals will move us too far in the opposite direction. It is important that there continues to be an element of parliamentary scrutiny, not for the sake of MSPs or so that the Parliament can show that it, and not the Executive, holds the power; such scrutiny is important for the objectors, whose lives will be affected by the decisions that are taken on private bills. It is the objectors whose houses will be purchased compulsorily and who will experience noise and other difficulties in their back yards.

In effect, the Executive has been the promoter of the private bills that have been considered so far, even though a body such as Scottish Borders Council might nominally be the promoter. If the Executive had not given a nod and a wink to Scottish Borders Council to indicate that money would be made available for the Borders rail link, I doubt that the Waverley Railway (Scotland) Bill would have been introduced. There has been a great deal of hypocrisy in the operation of the existing system.

If the Executive continues to be, in effect, the promoter of such bills and, in addition, is charged with scrutinising all the reports, people might feel that the system is unfair. Although the operation of the present system might not have pleased some of the objectors who did not get what they wanted, I do not think that anyone could have complained that they were not treated fairly. I believe that the objectors saw the Parliament as being independent from the Executive in the process. The private bill committees tried hard to ensure that the objectors got a fair crack of the whip. If all the decision making lies in the hands of the Executive, people may well feel that they cannot get a fair crack of the whip and that the outcome is predetermined because the Executive is also the promoter. I will be honest and admit that I do not know how we can get round that, but I am concerned that under the new proposals it seems that the Parliament will have no role, while the Executive will play a highly significant role. I worry about the effect of that on people who have legitimate concerns.

The Convener: A question springs to mind on the back of what you have just said. You are right to say that the Executive has expressed support for many private bill projects in advance and has indicated that it would make money available to develop them. However, several of the political parties that were represented on the Waverley Railway (Scotland) Bill had previously expressed support for the Borders railway project, even if the individual members who were nominated to serve on the committee did not have a particularly close connection with it. Surely it could be said that that arrangement meant that it was predetermined that

the bill would be approved and that only the detail could be amended?

Tricia Marwick: I have some sympathy with that argument, but although people may have thought that to begin with, the members of the committee served on it faithfully and listened to all the evidence. We treated the objectors with respect and courtesy. The reports were genuine reports. As members well know, the committee system that we have in the Scottish Parliament means that, although parties have signed up in different ways on issues, we work together. The members of my committee—and those on Jackie Baillie's committee—worked collectively to ensure that the right decisions were reached.

Tommy Sheridan (Glasgow) (Sol): I have a couple of questions for either Tricia Marwick or Jackie Baillie. All of us are agreed that we want to streamline procedures. If something needs done, it needs done, and we should try to get it done. There is good will towards the Transport and Works (Scotland) Bill, but I am worried about how communities will make their objections. We need to ensure that their views are thoroughly taken on board.

I turn to the issue of Scottish ministers deciding to appoint an independent reporter and triggering a public inquiry. Under the proposals, Scottish ministers will then decide whether to accept, modify or reject completely the report of the independent reporter. Is that not a wee bit like having a predetermined view? In other words, if the Executive supports a proposal and the independent reporter's recommendation goes against the proposal, will the Executive ever decide to back down? I have a follow-up question, but my first question is whether the process is robust enough, particularly in taking on board people's objections.

Jackie Baillie: The process under the bill is more robust than the current system, under which objectors who have made individual objections are channelled into groups of objectors. Each group has to appoint a spokesperson, yet, in some cases, group members have not met one another. In addition to preparing its original witness statements, each group also has to prepare rebuttal statements. On the objector side, that whole process can be virgin territory, whereas, on the promoter's side, a battalion of lawyers and experts, noise consultants and so on do the work. It is a bit like David and Goliath. I do not mean to be patronising in any way, but—certainly on the committee on which I served—the objectors were superb. They marshalled their arguments and cut through some of the technical nonsense to get to the things that really mattered to them.

My criticism of the current situation is its inflexibility. I refer to the length of time that

objectors and witnesses are given to present highly complex issues to members. They have 10 minutes to speak—that is it. They have to make their case quickly and clearly. They can answer the committee's questions and rebut arguments from the other side, but the process is very channelling in nature. It does not allow them any flexibility in the time available for putting their case, but a process involving an independent reporter could allow that. Some of the submissions that the Local Government and Transport Committee has received from objectors suggest that, in order to rebalance their role in the process, they would like to be staffed with experts. That proposal may be worthy of your consideration.

I turn to the ability of Executive ministers to accept or modify proposals from the reporter. There is an exact parallel with what private bill committees do. Currently, members of a private bill committee move amendments; they are the only people who can do that. In some instances—it did not happen in my case, but it is relevant to Tricia Marwick's experience—a committee can agree to an additional provision, such as a train station, that did not form part of the original proposal that the Executive approved. Certainly, such a provision would not be what the money was set out for, but that is the end result. That is a clear indication of the way in which the process could operate under either system.

I am also clear that issues around, for example, patronage and demand modelling evolve over time. The first bite at the cherry is not necessarily the end result as the figures become more precise over the process and people become more aware of what needs to be done to customise a system or rolling stock, which can make a difference to the time taken to get around a given piece of track. Such technical issues can change people's minds. In the present system, that change results from committee debate, but an independent reporter could also find a need and demand for another train halt, for example.

Tricia Marwick: I share some of Tommy Sheridan's concern about the Scottish ministers being able not only to accept, but to modify or reject the reporter's recommendations and, if appropriate, to make a final order that will be subject to parliamentary approval if a scheme is of national significance.

I return to the question of what is of national significance and what is of local significance. In effect, ministers will be able to do what they want regardless of what a reporter says. If a development is not of national significance, Parliament will have no role and a local order will be made. If a development is of national significance, Parliament will be reduced to saying yes or no to whatever the Executive proposes. I am genuinely concerned about that.

Some debate is needed near the end of the process that does not necessarily result in a yes-or-no answer. When ministers receive the report from the independent reporter, I would like a parliamentary committee to receive it too, so that it has the opportunity to consider the report before an order comes before Parliament and to question ministers on decisions and on why they want to modify recommendations or reject advice. A role needs to be developed for the Parliament and its committee system, although it should certainly not be the role that we have under the current system.

Tommy Sheridan: I asked Jackie Baillie and Tricia Marwick about the issue because there is no question but that the current system needs to be changed—nobody would argue that we should stick with what we have. The current system is too laborious and it allows nothing like the required importance to be attached to some projects and to delivering them on time. However, if we are to replace that system, we should replace it with something that is better.

I am worried because of the comparison with major road projects. The M74 extension was very contentious in Glasgow, so an independent reporter held a public inquiry, which resulted in that independent reporter's recommendation against the extension. That recommendation was ignored and the extension is to proceed.

Are we talking about simply replicating that system, which leaves a sour taste in the mouth of members of the public who have spent an awful lot of time and energy on giving input to public inquiries only to see, as someone said earlier, an outcome predetermined from the beginning? The feeling in Glasgow was that the outcome on the M74 extension was predetermined from the beginning. The independent reporter rejected the arguments in favour of that project, but that view was ignored. Will we simply replicate that system? Is there no way for the bill to attach more status to independent reports?

Jackie Baillie: I do not think that what you describe will be the consequence of the bill or has been our experience in Parliament. Any project with which the Executive decides to proceed has a budget heading, never mind the fact that it belongs to a subject committee. Our current system enables us to scrutinise proposals twice—once at the subject committee for which they are a relevant policy issue and once through the annual budget exercise, which enables the Parliament to question priorities and in which big or small transport projects are likely to feature as separate budget lines.

We cannot and should not ignore the fact that we already have a parliamentary scrutiny system that works and which lends itself to the bill. The aim is not to remove Parliament's scrutiny but to

proceed proportionately and to use Parliament as it should be used.

Tommy Sheridan: I am not sure whether that was the point that I made. My question is whether the new system will allow more weight to be attached to the result of public inquiries. You talk about a process that will allow the Scottish ministers to appoint an independent reporter if objections are made, yet ministers will have the power to ignore the reporter completely. Is that fair?

14:30

Jackie Baillie: The bill makes it clear that a proposal can be accepted, modified or rejected—all three options are open to ministers and to the Parliament. Therefore, if a minister lays an order that seeks to change a project in a way that does not reflect the independent reporter's recommendations, it is for the Parliament to scrutinise the order, just as we currently scrutinise ministerial orders.

Tricia Marwick: I disagree slightly with Jackie Baillie. As I understand it, such an order would be subject to the affirmative procedure and the Parliament would not be allowed to amend it. There would be no question of amending the order to ensure that the approach reflected the independent reporter's suggestions. That is a problem. There should be scrutiny of the decision-making process when ministers want to modify or reject a reporter's recommendations. A committee of the Parliament should question the minister about the decision before the order is laid.

Tommy Sheridan: You are a co-promoter of the bill. Do we have an opportunity to flag up an intention to build in such checks and balances? I understand that if a project is regarded as being of national significance, the Scottish Executive can decide to reject the reporter's report entirely and proceed without further legislative scrutiny—I hope that I am not misrepresenting the situation. Such an approach might add to the public perception that we have all encountered, which leads people to say, "Och, once they've made up their minds they just dae it anyway." People think that consultations take place on matters that have already been decided.

A procedure that allowed the Scottish Executive to slap a "national significance" tag on a project and reject the recommendations of a public, independent report that the proposal be rejected or modified would not sufficiently involve the public or take cognisance of such independent reports. Is there room for giving extra weight to a public report in such circumstances, by ensuring that there is a channel for further scrutiny?

Tricia Marwick: As I said, we need a procedure near the end of the process whereby a committee

engages with the minister on the Executive's attitude to the independent inquiry reporter's report, regardless of whether the recommendations are to be rejected or modified. Such a procedure would do the Parliament a service, in that we would not be faced with a laid order that we could only accept or reject. Such a procedure would give weight to the Parliament's views and confidence to objectors that they were being dealt with fairly.

In all planning matters and in the processes that we undertook in relation to the proposals for the Borders railway and the Edinburgh tramlines, culture is the issue. Do people believe that their voices will be heard and that they can make a difference? In the planning system in general, as well as in the bill that we are considering today, there are huge challenges for the Executive and the Parliament to ensure that people are confident that their views will be taken into account. Despite the failures of the current system, it has allowed people's voices to be heard. Objectors have not criticised the system on the ground that they did not get the hearing that they hoped for.

Jackie Baillie: That is a fair comment up to a point. However, in written evidence to the Local Government and Transport Committee, objectors questioned whether partnership members could stand apart from the process—apart from Mike Rumbles, who makes a habit of doing that. *[Laughter.]* We should not believe that a committee of MSPs is in any way given more credibility than is an independent reporter.

Tommy Sheridan's point is about what happens after a report has been produced. Two things will fix the problem. First, a report that is a matter of public record will of itself create an expectation about what will happen next—such as the publication of recommendations, for example.

Secondly, a subject committee that has before it an affirmative order laid by ministers may decide to undertake a degree of scrutiny. Policy committees do that in any case. I would expect the Local Government and Transport Committee to take an active interest in any orders that ministers laid.

Tommy Sheridan: I am sorry for taking so long, convener. Jackie Baillie seemed to be hinting that she would support public reports being open to the public. At the moment, however, that is not the case. Reporters submit their reports with recommendations to Scottish ministers. As a promoter of the bill, are you saying—

The Convener: Jackie Baillie and Tricia Marwick are not promoters of the bill. They are here only as witnesses. This is an Executive bill.

Tommy Sheridan: I am sorry. I thought that they were promoters of the bill. As witnesses who

have a great deal of credibility, because of their experience and deep knowledge of the issue, would they support reports being made public?

Tricia Marwick: Yes. It is important that they should be made public when Scottish ministers receive them.

Ms Maureen Watt (North East Scotland) (SNP): I understand the need for change to the present system, for the self-preservation of MSPs. I am also aware that railways are treated anomalously as compared with other major projects. The bill's drafters looked to England and the Transport and Works Act 1992. For that reason, it has been described as TWA-plus—in other words, the TWA with knobs and bells on. The bill gives ministers much more control than is necessary—including, I understand, the ability to amend legislation retrospectively. How do you feel about the fact that, under the bill, the Waverley Railway (Scotland) Act 2006, the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006 could be revoked, because of the strength of the powers that it gives to the Executive?

Jackie Baillie: I have no problem with borrowing from the Westminster Government and improving on what it has done. If the bill is the TWA-plus, the "plus" will be of benefit.

Ms Watt: When I referred to the bill as the TWA-plus, I meant that it gives more powers to the Executive.

Jackie Baillie: I am not convinced that that is the case. The Executive and the Parliament are not far apart on major road transport projects. The Parliament passed the Edinburgh Tram (Line One) Bill, with the support of the Executive. *[Interruption.]*

Shall I continue over the fire alert, convener?

Tommy Sheridan: That is what the announcement just said.

Jackie Baillie: You are not the convener, Tommy.

Tricia Marwick: Neither is the disembodied voice that accompanied the fire alert.

The Convener: The clerks have informed me that I must suspend the meeting until the alert is over. We do not need to leave the building, because the announcement does not require us to do so.

14:38

Meeting suspended.

15:00

On resuming—

The Convener: I have been advised that it is now safe for us to proceed and that there is no imminent threat to our safety, so we can recommence the meeting. I think that we were in the midst of the witnesses responding to a question from Maureen Watt, but I ask her to refresh our memory of her question. We will not criticise her if she gets any of the words slightly out of place.

Ms Watt: Jackie Baillie more or less answered the question in that she said that it was okay to have the TWA-plus, which gives the Scottish ministers more power. I was waiting for Tricia Marwick to say whether she agreed.

Tricia Marwick: The important thing is that we get a process that suits the Scottish Parliament. If we can borrow from elsewhere and enhance what we have, that is no bad thing. We have not got the process right up to now and we need to get it right in the bill because we cannot keep chopping and changing the process for public transport and other huge projects. If that means taking processes from elsewhere, that is fine. I have already expressed my concern that the bill gives the Executive just a touch too much power, but I welcome the general thrust of the bill.

Jackie Baillie: Earlier on, I may have commented that, under the bill, the Parliament would have a role at a preliminary stage in agreeing to the general principles of a project. I wish to make it abundantly clear that that is not the case.

Ms Watt: Tricia Marwick has been involved in the Planning etc (Scotland) Bill. Does she perceive any overlap between it and the Transport and Works (Scotland) Bill that might cause conflict, or are the two complementary?

Tricia Marwick: There will obviously be some sort of overlap between the two bills in regard to developments of national significance and the national planning framework, but we need to develop the proposals that best suit the Parliament. The proposals on developments of national significance should mean that the national Parliament will have some say in such developments.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I will raise two points, one of which relates to the M74. I will put a general proposition to find out whether the witnesses, with their experience of private bill committees, agree. The Scottish Executive's policy was that there should be an M74 extension and it was voted in on that policy. Would it not be rather perverse if any system that the Government set up had the result

of stymieing its own policy at one planner's behest? What mandate would one planner have to go against the mandate of an Executive that, whether we like it or not, has been voted in by the people?

Jackie Baillie: I could not have put it better myself. Any political party is elected on a manifesto and its job in government is to implement that manifesto, occasionally in coalition. One would think that the coalition parties would have a majority in the Parliament, so it is a question not only of the Executive pursuing something irrespective of an independent report but of the Parliament agreeing with that position by majority.

Tricia Marwick: Governments have the right to get their programmes through. It is up to the Opposition to oppose and change legislation where necessary, but Governments set out matters such as transport infrastructure projects in the manifestos and receive support on that basis. I agree with Fergus Ewing that it would be perverse to introduce a system that might affect those commitments.

However, the reporter has a wider role than simply saying whether a scheme should go ahead. Election or party manifestos say only that, for example, there will be an M74 extension; they do not specify its route. The reporter—and, indeed, the committee in question—has to consider many issues such as whether a proposed route is the best one and whether it will affect people, who would then be entitled to compensation. In principle, I agree that such projects should go ahead, but people's opinions can change when they examine the fine detail and find that the proposed routes are not what they had hoped for.

Fergus Ewing: If an SNP Government were to pledge to dual the A9, any reporter who rejected such a project would get fairly short shrift from me.

Tricia Marwick has anticipated my second question, which is not so much about the general process of considering objections as about specific objections that set out what amount to alternative proposals. After being contacted by people who had proposed alternatives to major projects that committees were about to consider, I was not entirely satisfied that they had been given a fair hearing. For example, Mr Simon Wallwork proposed a light rail and park-and-ride scheme as an alternative to the Glasgow airport rail link. Although he was not an engineer, he had at least worked up a proposal. I know that Jackie Baillie's committee considered his evidence very closely, but I wonder whether we could find a means for independently appraising realistic alternatives. The flaw in the current system, in which the promoter can be asked to say what he or she thinks about the alternative, is that it will always say that its

scheme is better than any alternative—of course, that is human nature. I do not want to protract the process of introducing national transport and works projects but, given the two witnesses' experience of the current system, I wonder whether they have any thoughts about an ideal method of giving realistic alternatives to such projects—no matter whether they be motorway routes or airport rail links—a full, thorough and sufficient appraisal.

Jackie Baillie: First, I should point out that I was convener of the Edinburgh Tram (Line One) Bill Committee, so if Mr Wallwork had presented his proposal to us, he would have been giving evidence to entirely the wrong committee. I have to confess that I have not examined his scheme for Glasgow airport.

That said, at the moment, these committees can consider alternative routes, but only when they are at what might be called an initial stage. In saying that, I do not want to give the impression that they take only a superficial look at them. For example, the Edinburgh Tram (Line One) Bill Committee examined alternative routes to service the Western general hospital and was able to dismiss them quite quickly because, if I remember correctly, none of them was able to operate at a particular gradient. The process allowed us to determine whether the closer examination of alternative routes, beyond an initial sift, would have any benefit and we felt that doing so would have meant lodging an amendment to the bill. That would have meant reopening our consideration of the bill, which would have been quite difficult to do and would have taken us back almost to the start of the process. In that respect, the current system tends to drive people away from considering alternative routes.

I think that having a reporter will provide more flexibility because, after carrying out the initial sift, he or she might decide that there is merit in looking more closely at alternatives. I do not get the sense that the reporter is fettered in any way; I certainly cannot see from the papers in front of the committee any attempt to fetter the reporter in that regard. I would have thought that the committee could seek some assurance from the process that is proposed rather than the existing process, which would be counterintuitive to what you are suggesting.

Michael McMahon (Hamilton North and Bellshill) (Lab): My question has been touched on, but I seek clarification. You felt that your bill committees could get bogged down with the technicalities. Where MSPs do not have the expertise and it is of no benefit to them to get into the detail of the technicalities, it is right to cut through it, but is there a danger of throwing the baby out with the bath water? Genuine objections

on social grounds or regarding non-technical issues would not be able to come through in the normal consultation that we are all aware takes place on other bills. Can a balance be struck that would satisfy your concerns that the technicalities should be left to those with expertise while allowing objectors the right to put forward their ideas and suggestions? Could that fit within the structures that would be allowed under the new bill?

Jackie Baillie: I would expect anybody promoting a bill to contact their local MSPs. It is called for in the bill that the promoter of a development should notify everybody, including local MSPs, who are one channel between the electorate and the Parliament for communicating messages, whether they are complex and technical or to do with social policy. I would have thought that that could be done with the existing complement of MSPs, but the reporter will be able to reflect issues beyond just the technical. There is no doubt about the complexity of the private bills process and I would not want to subject the committee to the pain that we went through; suffice it to say that I do not think that you will be throwing the baby out with the bath water. The technical issues will be handled competently but, in addition, some of the genuine views of objectors will emerge, if not through that process, certainly through MSPs doing their job.

Tricia Marwick: The process was extremely difficult and, as we have both alluded to, extremely technical, but there was the opportunity to listen to the social case. Indeed, the Waverley Railway (Scotland) Bill Committee made it clear that it approved the Borders railway precisely on the social case. Moreover, there was a social case for a station at Stow. Can a reporter do that equally well? I see no reason why not. There are opportunities throughout the public consultation for people to put forward their views. Like Jackie Baillie, I do not think that the reporter will deal only with technical issues; I think that he will look at the issues in the round. There will be ample opportunity for individuals and community groups to put their point of view. If there are objectors to the scheme, it is more than likely that there will be public hearings at which people can put their views. There is an opportunity for the community to be involved in that way. I do not think that we are throwing the baby out with the bath water; the new system will be just as good as the one that we have at the moment. My concern is not with whether people will be able to engage with the process—that will be dealt with effectively under the new system—but with the final wee bit of the process.

Michael McMahon: That comes back to the point that Tricia Marwick made earlier about the manner in which statutory instruments are

introduced. If the eventual proposal does not address the social and economic case that has been made by local people, how do we address that?

Tricia Marwick: That is part of my concern. At the stage at which the reporter introduces his report, which is either accepted by the Executive or modified or changed, there is no way that MSPs can put their point of view forward. That is why at the final stage, before the final order is introduced to the Parliament, there needs to be some element of scrutiny by MSPs. I am not saying that there should be three or four weeks of scrutiny, or three or four meetings, or that we should rerun what has already been done, but we need to be able to question ministers and perhaps even the reporter.

15:15

Jackie Baillie: I disagree with Tricia Marwick in that I think that such a process already exists. No policy committee of the Parliament that is worth its salt would not, if there was any dispute about an order that was being dealt with under the affirmative procedure, call the minister before it to question them and undertake a degree of scrutiny. Therefore, there is a safety net. MSPs can get round an order, if they choose to do so.

The Convener: That brings us to the end of our questions. I thank Jackie Baillie and Tricia Marwick for their evidence.

I now welcome John Halliday, who is the acting assistant chief executive for transport and strategy at the successor organisation to Strathclyde Passenger Transport—SPT—which I see is cleverly called Strathclyde Partnership for Transport, or SPT for short.

John Halliday (Strathclyde Partnership for Transport): Just a minor correction, convener: I am no longer acting assistant chief executive, I am the actual assistant chief executive.

The Convener: Excellent—congratulations. I point out to any members of the public who have just come in that the reason why we are running a little behind schedule is that we had a fire alert earlier.

I invite John Halliday to make any introductory remarks and to give us SPT's perspective on how it would deal with future major public transport projects.

John Halliday: I am here to represent SPT, but I have the advantage of having been a member of the Strathclyde Passenger Transport Executive, so I bring a bit of experience of what went before. We are in the process of promoting the Glasgow Airport Rail Link Bill, which is being dealt with under the modified private bill process, which involves an assessor. I am perfectly happy to answer questions on that.

I have a host of points that might be worth bringing out in due course but, rather than make a lengthy speech now, I will leave it to the committee to ask questions on points of interest. SPT welcomes the idea that the development of major projects should have an appropriate pace. Our general feeling is that the present process is lengthy, involved, expensive and ultimately extremely exhausting for all parties. That is the view not only of promoters of projects but of communities. On that basis, we welcome the proposals.

I will comment on some specific issues that have been mentioned. In thinking about the inquirer process, the committee should consider that, in transport matters, a recognised process already exists called the Scottish transport appraisal guidance process, which is a key element for any promoter. The promoter is charged with developing policy objectives that are pertinent to the project and the STAG process provides a full test of the promoter's policy objectives. I imagine that, under the proposed process, the inquirer would scrutinise the STAG process closely, as happens in the present private bill process. Therefore, the structure already exists. There are some other aspects of the process that we are interested in. For example, the length of time that it takes needs to be appropriate, by which I mean that it should be neither too short nor too long. In our experience, that is an important consideration.

We have been extremely interested in some of the financial consequences that are identified in the literature. The front loading of the process is noteworthy. It has been assessed that that will cost promoters an additional £1 million. In the round, that is probably not a bad thing, in that it will mean that more work will be put in at the start of a project. One would expect that by the time an order is applied for, a lot of the work will have been done. That presents a danger for promoters. If an application for an order ultimately fails, there is a higher risk of the relevant public authority having to bear that cost. Risk is a consideration, but the new system will certainly provide a good incentive to get things right.

The Convener: I invite questions from committee members.

Paul Martin (Glasgow Springburn) (Lab): One of the points that you have made is that the bill will result in less bureaucracy. We know that the current system allows for a great deal of bureaucracy. We have had experience of being advised that passing a bill would result in less bureaucracy. Can you be specific about how the bill will result in less bureaucracy?

John Halliday: Our view is that the involvement of an expert inquirer will make the process much more dynamic in the sense that there will not be a

need to go through as much of a paper trail as we need to go through at the moment. I do not think that that diminishes the validity of the argument. I have had experience of building up a case in the private bill process and can assure you that that generates an enormous amount of paperwork. A staggering amount of evidence is fed in. The end product is what is seen, but an enormous amount of paperwork leads up to its development.

Paul Martin: Why is it the case that there will be less bureaucracy? In the past, we have been assured that passing legislation would result in less bureaucracy, but organisations have subsequently told us that the new process still involved bureaucracy. Will there not always be bureaucracy, regardless of how we proceed? Most of the projects in question involve significant sums of public money, so there will always be a requirement for a paper trail. Why do you think that the appointment of a reporter will mean that there will be less of a paper trail? I do not know many reporters who have not had to deal with a significant amount of bureaucracy. What will happen to the paper trail?

John Halliday: I share your view. In the round, there will probably be as much paperwork as there was before. Let us face it—there will be a burden of proof on the promoter of an order, who will have to show that the project stands up. The Scottish transport appraisal guidance requires that it be demonstrated unequivocally that a proposal meets all the necessary objectives, which include the five Government objectives that are before us. The inquirer would expect to be provided with an appropriate level of paperwork.

I am not sure about how much bureaucracy it is being suggested would be saved. I agree that regardless of which way one proceeds, there will always be a burden of proof on promoters, which they will have to satisfy one way or another.

Paul Martin: The bill will mean less time for parliamentarians to scrutinise proposals. Previous witnesses have told us that the private bill process involves a significant input from parliamentarians. That will be put aside, so the only advantage of the bill is that an independent reporter will spend time considering all the technical details that are provided. Is that the bill's only advantage?

John Halliday: I see the benefit of such an approach, but it is for members of the committee to consider the benefits of removing MSPs from the scrutiny process and leaving that role to a reporter.

The current process is slightly different from the experience that the previous witnesses described—it is almost halfway between that experience and the approach that is proposed in the bill. During the preliminary stage of the

Glasgow Airport Rail Link Bill, the proposal was considered by the Glasgow Airport Rail Link Bill Committee, but at consideration stage an assessor has been appointed to scrutinise the proposal. We are providing the assessor with evidence to support the development of the project. The approach saves parliamentarians from what is—believe you me—an onerous task. However, the scrutiny must take place.

The committee needs to give careful consideration to the pace of scrutiny. The scrutiny process deals with all the issues, but it places a heavy burden on the promoter—that is why I look tired at the moment. People might say, “So what? You’ve got the resources,” which is fair enough, but the process also places a burden on the objectors, who must prepare the evidence and put it to the assessor in a particular timescale. I suspect that there is a need to consider whether to time-limit the process, to force an appropriate pace and an assured outcome.

The Deputy Convener (Fergus Ewing): The convener is temporarily absent, so I will take the chair. Members should let me know if they want to ask questions.

I asked the previous witnesses how, in the current system, alternative proposals are considered by bodies such as SPT. Is there currently no method by which an alternative proposal for a project can be appraised independently of the promoter? Given that the promoter has already considered how best to deliver the scheme, we would expect the promoter to be reluctant to conclude that their preferred method is inferior to an alternative.

Perhaps in response to my question you can draw on your experience of the Glasgow airport rail link proposal. I am sure that you remember Mr Wallwork's proposal. Although his scheme seemed to be worth considering, there appeared to be no mechanism for working up the proposal on the basis of the necessary financial and engineering expertise, to enable us to make a judgment. If, as we presume, the bill is passed, how will the new planning process enable us to deal effectively with such matters, without denying people the opportunity to put forward alternatives? My impression is that such opportunities are currently pretty minimal and that alternative proposals are not subject to thorough, robust and independent analysis.

John Halliday: I note your observation. It is important that I be careful about what I say about the Glasgow airport rail link project, which is currently being scrutinised. I will therefore talk about things in general. Please excuse me for not dealing with Mr Wallwork's proposal.

15:30

Fergus Ewing: You are right not to do so, and I would not criticise you for that. I appreciate the point that you have made.

John Halliday: Thank you. However, I think that the issues will emerge in what I say.

The proposal to appoint an expert to inquire into the process is a step forward. A real test has existed in the Scottish transport appraisal guidance, to which I have alluded, for recent projects that have been promoted. The fundamental basis of that guidance is that people should start from a problem and work up the alternative options. It is up to the promoter of a project to demonstrate that the preferred option is, in order to meet the policy objectives that have been set, the superior option and that, by implication, the alternatives have dropped away. It seems to me that in locking the expert-inquirer process into the procedure, the inquirer would and should have the absolute right to scrutinise and establish whether the process is robust and whether an appropriate span of alternatives has been considered.

I was interested in what the previous witnesses said and would like to tell members about some of my experience. It is important that the process is public. It might be recalled that Strathclyde Passenger Transport promoted Strathclyde tram proposals some years ago. The proposed legislation, which was scrutinised by the House of Lords, fell at Westminster, but we do not to this day know why it did so and we could not learn from what happened. There was and remains a distinct taste of unhappiness about the process. We believed that we had done the best job we could, but people who objected to the proposed legislation—as well as the promoter—did not know why it failed. The committee might want to consider the openness that an inquirer could bring to the process. In that context, having the STAG process open to inquiry and scrutiny and the outcome of the process being reported by the inquirer would result in the satisfaction that the committee seeks.

Fergus Ewing: The Parliament has been criticised in many respects as an institution, but it has not yet been compared to the House of Lords.

Does the Executive effectively consider worked-up proposals and options for the delivery of projects under the STAG process? Are civil servants and the Executive tasked with doing so? Do they perform that task?

John Halliday: No. The promoter sets out its proposals and should be able to demonstrate why the alternatives have been rejected. I was suggesting that the inquirer may have an opportunity to redirect the promoter if a viable alternative has not been investigated.

I am sorry that I have been a bit sketchy. As far as I understand them, the bill's proposals mean that there would be a prior process in which there would be scrutiny when there is an application for an order. Perhaps there could be a role there in considering whether promotion of the order has been competent and fulsome.

Fergus Ewing: Who considers the alternatives when they are prepared for the promoter under the STAG process?

John Halliday: Under STAG, the promoter sets the policy objectives of the scheme. In some respects, that is the nub of the problem that surrounds some major projects. In some instances, questions have been asked about the promoter's policy objectives. Clearly, in promoting a scheme, the test of the five Government objectives applies. Unless the promoter can demonstrate clearly that the scheme meets those objectives, the question remains about the appropriateness of the scheme.

Fergus Ewing: That is extremely useful. I am grateful for your evidence.

Only after undertaking the STAG process, working through the proposals and considering the options does the promoter need to consider which option should be picked. In that respect, the promoter is really marking its own exam paper. Surely the promoter cannot be expected to adopt an independent view of options that it has put forward. Does not that amount to a flaw in the system?

John Halliday: It is perhaps not a flaw but, given the span of this sort of legislation, it would be expected that consultation be undertaken in which the promoter will be informed of the points that need to be considered.

The question is a valid one, but I will put the answer another way. It is very difficult for projects to meet everyone's expectations; invariably, a balance needs to be struck. For one reason or another, someone somewhere will not like a project. They may be involved in a business, have a vested interest in an alternative proposal or be one of the individuals who would be impacted directly. A test needs to be applied to ensure that the promoter promotes the project. If the process were to be otherwise, an awfully long timescale would need to be levered in, which may not get us anywhere. There is also the imperative to deliver projects. I guess that the member was thinking about the pace of delivery.

Fergus Ewing: I fully accept that argument. Logically, any consideration of the alternatives has to be carried out near the beginning of the process.

John Halliday: Absolutely.

Fergus Ewing: It cannot be introduced—Holyrood style—halfway through. That would not work at all.

John Halliday: No.

Fergus Ewing: I do not want to propose anything that would further protract an already extremely protracted process. I am grateful for your evidence. Thank you.

John Halliday: On that point, I suggest that the objective of the bill is to produce certainty about outcomes—the process of promoting the order would otherwise be wasted. The issues should be bottomed out early in the process and everyone should be on firm ground by the time the order is promoted.

The Convener: I have one question before I bring in other members. The bill proposal is that only projects that are defined as being of national significance will require parliamentary approval; projects that are of local or regional significance will not. Is that the right balance? Which of the projects that are currently under consideration are of national significance and which are of regional or local significance?

John Halliday: As the convener might expect, I gave some thought to that issue in advance of the meeting—the question is a difficult one. National significance will be defined in the national planning framework, which is in a sense a snapshot in time. I will give one example to illustrate why the proposal may lead to problems.

SPT is currently working up the proposals for the Glasgow crossrail project, which has been under consideration for some time. The project has been debated in the Scottish Parliament—indeed, it was the subject of an order under the previous system at Westminster. Crossrail is not in the national planning framework or—as yet—in the developing rail strategy. However, the west of Scotland contains 42 per cent of Scotland's population and people there, who are familiar with the project, almost unanimously regard it as being of national significance, although it might appear to be a local project. The committee might want to consider the factors that determine whether a project is regarded as nationally significant. Will only projects in a certain box be regarded as nationally significant? It should be possible to lever in other projects.

We must consider the dynamics of development. We are living in a world in which things are evolving faster than ever. Developments are being proposed that would not have been considered 20 years ago, such as the Clyde gateway waterfront regeneration project, which is hugely significant. In such a context, the committee must consider how projects are designated as being of national significance.

The Convener: I do not know whether you heard Jackie Baillie suggest that the threshold at which a project is regarded as nationally, rather than just locally, significant should have something to do with the project's economic impact. Would such a criterion be worth while?

John Halliday: I would be cautious about making economic impact the only criterion. My experience in public transport is that it is almost always difficult to find public transport projects that have huge cost benefit ratios and net present values. That is not to say that the projects are not worth delivering; it is simply a feature of the science of economic evaluation, which cannot capture all the benefits of a project.

In Scotland, the STAG approach represents a great leap forward. Colleagues in England look north and are envious of our approach, because although the kernel of the appraisal is the economic case for a project—its financial efficiency—other elements that will make a scheme worth while are considered. Those elements are weighed up, so that a judgment can be made about whether a project should go ahead. In a public transport context, the elements that cannot be quantified are often more significant than the quantifiable factors.

The economic case for significant public transport projects is usually marginal. The Department for Transport tends to think that projects that have a benefit cost ratio of more than 2—that means that the economic benefit will be twice the costs—should be taken forward. However, many public transport projects struggle to reach a BCR of 2. I therefore urge that a cautious approach be taken in consideration of what projects should be given the go-ahead, so that the broader scope of the appraisal guidance is taken into account.

15:45

David McLetchie: I have a couple of points. I notice from the financial memorandum accompanying the bill that the cost to promoters of the new system is estimated to be higher than the cost of the present parliamentary system. Do you accept that the new system for approval is likely to be more expensive? Is that a reasonable proposition?

John Halliday: I touched on that earlier, but I have a couple of other observations. The financial memorandum suggests that there will be approximately £1 million in additional costs. My observation is that the bill would shift the cost of development of the project from later to earlier. That is just my gut feeling, as we have not done a huge amount of analysis on it. Although front loading the project with work that needs to be

done at the front end would make it more expensive at the start, it would probably be worth while in respect of making the project more efficient later on as it moves into the formal order process.

David McLetchie: That was going to be my next question. If the process costs the promoter more because of the front-loading element, will that additional cost be reflected in the efficiency of the process? Do you expect the timescale of the process of evaluation and approval to speed up in comparison with the current system? For example, if a current project was under the new procedure, would it complete the approval process faster?

John Halliday: It is difficult to say yea or nay to that. From my reading of the Transport and Works Act 1992 and my understanding of the English system under it, I suggest that there is probably some efficiency to be gained and the formal stage of the order process should be quicker. That said, to be frank, if the scope of the work was not sufficient, that would suggest inefficiency on the part of the promoter and the cost of the middle part of the process could be just as high. In a sense, that is possibly the right way round, because the promoter carries the burden to develop the project.

There is another element: it is a little theoretical, but one needs to think about what happens to promoters of projects for which the orders fail. Let us consider the process as it happens today. At the preliminary stage, the promoter is basically given a green light, which tells it that it can start gearing up to its project's development. There is still a mass of detail to be gone through, but at least the promoter is assured that the project's principles have been approved.

One consideration of having the money at the front with no approval is the question of what happens when orders fail. The promoter would lose a considerable amount of finance from that. However, members may reflect on the fact that that is a strong incentive to get things right. There is, as ever, a balance to strike.

David McLetchie: Are not the promoters of national projects that get the green light largely funded by the Scottish Executive for the costs of promotion and parliamentary process? That is certainly the case with the Edinburgh tram link project, with which I am most familiar. I am not entirely sure about the economics of GARL, but I suspect that the costs of the process are underwritten by the Executive.

John Halliday: I think that your premise is largely correct. We are talking about very large projects that, under the current system, tend not to be within the financial capability of local authorities. However, authorities often band

together, as with the Stirling-Alloa-Kincardine railway. In my neck of the woods, SPT's regional capability allows us to finance elements of works, although we cannot fund large projects fully.

Nonetheless, in developing a project from the start, a fair degree of the money at the front end is often provided by the promoter of a project. That may be a good thing, because at least it stops frivolous projects being generated, although those tend to be weeded out in any case, because the promoter must make its case to the Scottish Executive for funding. Local authorities or promoters tend to pump in their money at the front end. The potential is that, if the project fails, the promoter will lose the money. I guess that a balanced judgment must be made on that.

Ms Watt: You have talked throughout about the heavy workload of promoting a bill and the long, drawn-out process that is involved. Should scheme promoters be required to provide information to objectors? What impact might that have? Might it speed up the process?

John Halliday: I was probably referring to the mass of technical detail. In my experience of the management of the GARL project, we have endeavoured to provide and make public the technical information along the way. That has frustrated several objectors, because despite providing that information, we cannot provide a host of information that is unfinished and is part of on-going development work. For example, that work may involve examining alternatives that fail and so do not see the light of day, perhaps because there has been a wrong premise that we have discovered through scrutiny. That is the nature of development work—it has to be done.

It is important that people who are at the rough end of projects can see appropriate information about the stages of development. My experience is that, through providing that information, we gain at least some acceptance, because people can see in a transparent way that the project is being developed professionally. People challenge projects. Most of them are lay people in technical terms but, my goodness, they are certainly up for scrutiny.

The Convener: That brings us to the end of our questions. I thank John Halliday for his evidence.

I welcome our third panel, which will give us the local authority perspective. I welcome James Fowlie, who is a team leader in environment and regeneration with the Convention of Scottish Local Authorities; Ewan MacLeod, who is a partner with Shepherd and Wedderburn and who is appearing on behalf of Shetland Islands Council; and Councillor Chris Thompson, who is a member of South Lanarkshire Council. I ask James Fowlie to make introductory remarks on the bill.

James Fowlie (Convention of Scottish Local Authorities): Perhaps unusually, COSLA does not have particularly strong views on the bill. We broadly support it and would certainly welcome the speeded-up process that it proposes. The bill's proposals are consistent with what we have long been arguing for in planning legislation.

Because we have heard few representations on the bill, we have little to say today. Instead, we are keen that the member councils that have raised concerns be given the opportunity to express them. We therefore invited South Lanarkshire Council and Shetland Islands Council to provide the committee with their views. I understand that other councils will be heard at a future meeting. If specific issues are raised, we will deal with them in the course of the questioning.

Councillor Chris Thompson (South Lanarkshire Council): My council welcomes the Transport and Works (Scotland) Bill. I am sure that we would all welcome anything that would speed up legislation for delivering transport projects. However, a few issues around the bill are worth considering. Having said that, I ask members to remember that I am a councillor and a lay person, and not an engineer or even a lawyer.

It appears from the figures—I heard a committee member discussing this earlier with the previous witness—that the application costs for large schemes could be high. Application costs could be anything from £10 million down to about £1 million for smaller-scale schemes. As we heard, in order to deliver a project such costs would be required up front. Even given what John Halliday had to say, we should consider whether that would discourage promoters from taking on specific projects. We believe that in order to ensure that more projects are brought forward, consideration should be given to identifying a funding stream that would enable the promotion of projects. Perhaps it could be similar to the previous public transport fund preparation pool. That could be a way of tipping the balance, in some cases.

On the primary function of local authorities, the explanatory notes refer to there being no “significant financial impact” because of the expected limited frequency of applications through the proposed process. Although South Lanarkshire Council and, I am sure, other councils would acknowledge that the main reason for the bill's introduction is to make the process more efficient and simple—compared with that for private bills—there could be significant additional funding requirements for local authorities to provide the necessary transport and planning resources. We all in local authorities know how difficult that would be at the present time. I am sure that members realise that planners are few and far between, and that civil engineers are even rarer.

We also want the committee to consider the issue of “paralysis by analysis”, if I may quote someone. The increasing need for a Scottish transport appraisal guidance analysis and a strategic environmental assessment in transport projects increases costs and can add to delay. The question is whether those types of assessment can be simplified and kept to a minimum so that funding is not sucked up into assessment instead of being used on the project itself. At the end of the day, we will end up with the studies and assessments—and those who do them—taking up all the money rather than it going into the project.

My final point is on deadlines, which are hugely important to all of us. Speaking for myself, I know that I work far better to deadlines; I am sure that other people would agree. People all the way up to the minister should have deadlines throughout the transport project process. It is only fair that deadlines regarding dates and how long things should take be applied to everyone in the process. By doing that we would get far more efficiency and timescales would be met, which would make the process better.

That is all I have to say, but I am of course happy to take any questions—if I can answer them.

16:00

Ewan MacLeod (Shepherd and Wedderburn): My remit this afternoon, on behalf of Shetland Islands Council, is relatively narrow. The council supports the principles behind the Transport and Works (Scotland) Bill; in particular, it supports the principles behind one of the proposed changes to the Roads (Scotland) Act 1984. From the submission that I have made on behalf of Shetland Islands Council, it will be apparent that the council finds itself in a peculiar situation. Because of a particular objection to a particular council project, the project is subject not to the normal inquiry process but to a special parliamentary procedure.

The difficulty for the council is about not openness and transparency, but paralysis. In this case, it is not paralysis by analysis but simply paralysis of process. As other submissions on the bill show, the special parliamentary procedure has been used very rarely—only twice in the past 60 years at Westminster, I think. It has never been used in the Scottish Parliament, and that brings difficulty because officials in the Executive and the Parliament are wary of what is novel or what has not been done before.

Shetland Islands Council wishes to be able to take projects to a determination stage—which would allow the openness and transparency that we all want in the decision-making process—and to put its case to an independent third party.

The Convener: I open up the meeting to questions.

Michael McMahon: I want to come directly to Chris Thompson. You seem to have hit on a major plank in the proposals in the bill.

John Halliday regarded application costs as a good thing, because they would prevent the proposal of frivolous projects. Your argument is that an application cost of between £1 million and £10 million could prevent good projects from coming forward.

Over a long period, the committee has heard from local authorities that are concerned about overbureaucratic requirements. They have put together projects but have then found that, having put in all the time and money, the funding stream was not available. Is there not a danger that, if a transport fund pool were put together, we would be returning to those days? If that happened, a local authority might not achieve its ends after presenting a project. That possibility—although I take Jim Cannon's paper seriously—will be a major consideration that might put people off presenting a project in the first place.

Councillor Thompson: That is a very important issue, but a balance has to be struck. We all want good transport projects to come forward. We are crying out for them in many parts of Scotland, and it would be a great pity if projects were held back only because of the up-front requirements for finance.

I am not suggesting by any means that a pool should fund projects entirely. John Halliday's point was well made. There has to be some pain for the promoters of schemes, and the pain will be that they have to put in money and time. However, the schemes have to be the right ones. They have to be schemes that can be argued for, and hearts and minds have to be won over.

My council and I have found ourselves on the point of taking forward very good schemes that have then slipped because other schemes were regarded as more important at the time. That sort of thing will happen, but the difference would be that the people making the decisions would have a choice of very good schemes in front of them. There would be options on how to spend the money. We need options and we need more of them, and I think that some funding would help with that.

Michael McMahon: Have you calculated how big that pool would be? How much would the Scottish Executive have to make available to COSLA? It might be fairer to put the question to COSLA rather than to South Lanarkshire Council, but what type of fund are we talking about?

Councillor Thompson: Unfortunately, I do not have a feel for that. I suppose that the criticism is

always that local authorities come looking for money but can never tell you how much; up to a point, I would bow to that criticism. We had such a fund before, and I think that we should consider setting up a similar fund and let people try to take money out of that to put together those projects. John Halliday hinted at how difficult it is to get such initiatives together.

I have served on the SPT and am now on the regional transport partnership. My concern is about the amount of time that it takes us in this country to get major projects together and about the fact that costs run away with themselves. The M74 extension is a good example of a project that has taken many years before we were able to take that work forward. We need more projects and we need good projects. Let us not lose that for the sake of a small amount of money.

Michael McMahon: My next question might be better directed at James Fowlie. I do not want to dwell on a constituency interest, but I would like to give an example from my constituency. Chris Thompson alluded to the M74 extension, which is an important project, but its knock-on consequence is that it will put pressure on the Raith interchange; as a result, we must consider how much money would be available to make the necessary changes at Raith to take account of the M74 extension project. Can some sort of analysis be done on that? Has COSLA done that analysis, and could some paperwork be produced to give the committee an idea of the type of funding streams that we would be talking about?

James Fowlie: The simple answer is no: we have not done that analysis. I will consider with my finance colleagues whether we can do such analysis and we can come back to the committee with some information. I take your point, but what we are really looking for is a level playing field, and there are a number of projects in which the Executive is at an advantage because it holds the purse strings, while some equally good local and regional projects might not go ahead if money is not made available.

Fergus Ewing: I am sympathetic to the points that Councillor Thompson has made about paralysis by analysis and about the cost and the time burden of environmental impact assessments and the like. I share those criticisms of the whole process, and they concern me a great deal.

The Executive has now created the RTPs; Councillor Thompson mentioned that he is now a member of an RTP. The legislation did not determine what powers the RTPs would have, but it is clear that each has to produce a broad strategy in its first year or 18 months. I argued—unsuccessfully, as it happened—at stage 3 of the Transport (Scotland) Bill that it would make sense for an RTP to draw up a list of the top 10 projects

in its area, so that there is a distinction between what is essential and what might be merely desirable and therefore not in the top 10. That could be done for Glasgow, Edinburgh, the north and the south; I know that Shetland is doing its own thing.

Somebody has to set priorities. Do you feel that the RTPs should make top 10 recommendations to the Executive? Should we be getting on with that so that we can have a preparation pool of such projects and so that there are always a few schemes that can be brought forward in case of unexpected delays to major schemes such as the M74? I know that, if the Dalkeith bypass had not been ready, there would have been nothing for the heavy engineering sector in Scotland to do. Fortunately it was ready, because this committee had urged the Executive to introduce a preparation pool 18 months before, and on that occasion the Executive seemed to listen to us. Do you agree that there should be prioritisation and that the RTPs should perhaps play the primary role, in consultation with COSLA, with the councils and with others, to allow us to achieve a quicker process and to have more candidate projects than there have been in the past?

Councillor Thompson: I certainly agree with the premise that the setting up of the RTPs is a huge step forward. My personal view is that the RTPs must now prove their worth by coming up with the type of projects and transport strategy that will take us forward. In the west of Scotland, we were fortunate in having two previous organisations that we could put together. We have a good staff base and, up to a point, we are off to a flying start.

At the moment, that transport strategy is being put together. It has to identify where we believe that the regional transport partnership needs to go. We need to be able to say that to you and to others, and the constituent authorities and others need to argue out what the priorities are and where they lie. You can imagine that that will not be a particularly easy thing to do. However, at the end of the day, we cannot hold you to account for not doing those jobs if we are not willing to say what we want. I take on board exactly what Fergus Ewing has said. We should be saying what we believe the main projects should be and where we think the money should be spent, and that we have a prepared list of projects that can be proceeded with if there should be any slippage. I admit, however, that I always like a bit of slippage as it can be a useful way of levering in a bit more money.

The John Hallidays of this world have a lot of experience and knowledge and that pool has to be used. The RTPs have to earn their keep by painting a vision that this Parliament will buy into

and by putting together and delivering the projects. That is the way forward and I hope that we in the west of Scotland can do that. We have made a good start and we want to keep going with it.

Mike Rumbles: My question is directed to Ewan MacLeod. I am a relatively new member of the committee, so I hope that I am not speaking out of turn. However, this is the first time in my seven years in Parliament that a lobbying company has given evidence to a committee on behalf of somebody else. Am I right in thinking that that is what Shepherd and Wedderburn is?

Ewan MacLeod: Absolutely not. Shepherd and Wedderburn is one of the top legal firms in Scotland. I am a partner in the planning and environment group of Shepherd and Wedderburn.

Mike Rumbles: So you give legal advice to the council?

Ewan MacLeod: Yes.

Mike Rumbles: I am interested in the issue of democratic accountability. You are concerned about the bridge from Bressay to the mainland in Shetland, to which Lerwick Port Authority has registered an objection.

According to the Transport and Works (Scotland) Bill, the council would put forward a proposal to the minister, who would appoint an independent reporter to consider the issue and report to the minister. The scheme in question is not national or of national significance, so it would be up to the minister to decide whether he approved the scheme. Do you think that that is a good example of the democratic process?

Ewan MacLeod: Yes. I want to draw one point to your attention. The scheme that Shetland Islands Council is interested in is a bridge that is being promoted under the Roads (Scotland) Act 1984. All that the Transport and Works (Scotland) Bill will do, if it is passed, is remove the need for a special parliamentary procedure. At the moment, there are orders that are sitting with the Scottish Executive for allocation to a reporter for an inquiry to take place into a number of orders that the council requires, including an order under the Coast Protection Act 1949 and a compulsory purchase order to acquire certain pieces of land that do not currently belong to the council. If it is passed, the Transport and Works (Scotland) Bill will simply put the roads scheme on the same footing as other orders that the council requires for the same project.

To address your question directly, I would say that the Minister for Transport—like all of you—is an elected MSP. He is bound to follow the legislation that has been set out by the Scottish Parliament or Westminster. Both the minister and the independent reporter, who has been appointed

by him to consider the issue of impact on navigation, which is the crux of the matter, will have to apply the various tests that are set out in the legislation. The environmental impact of the bridge and its social and economic impact will also have to be considered. All those matters will have to be brought together in one comprehensive report, which will make a recommendation to the minister on whether the proposals should go ahead. The minister will have the opportunity to consider the report. If either the reporter or the minister goes wrong in the analysis that they have undertaken, there is obviously recourse to the courts.

If the nub of your question is whether the process is likely to be any less open, transparent and democratic, my answer is no—I do not believe that it would be.

16:15

Mike Rumbles: Surely a parliamentary system in which a parliamentary committee goes through a process of taking evidence in public and producing its report is an entirely different kettle of fish from what is proposed in the bill. The minister would receive the report, which is not published, from the independent reporter. As we have seen with the M74, the minister can decide to reject the report's recommendations.

I am puzzled by your response, because I feel that the process would not be as democratic or as open as it is at present. However, we must balance that with the advantages of the bill because we would get rid of the bureaucracy and everything else. When we pass a bill such as this—if we pass it—which is all about generalities, evidence such as yours is interesting because it gives us a specific example that is pertinent to the decision makers. I want to ensure that we do not pass a law that sounds fine in principle but which turns out in practice to be very much less than open and transparent.

Ewan MacLeod: Your question raises a couple of issues. As far as openness is concerned, when a reporter is appointed there will be a public inquiry at which anyone with anything relevant to say will be entitled to appear or to be represented. The reporter will have to take into account any relevant representations. I accept what you say about the report of the inquiry not being published until after the minister has made his decision, but the report and the minister's decision will ultimately become public.

As I said, if something has been missed, if there is a feeling that the minister has taken into account irrelevant considerations, or if the procedure has not been followed properly, there is the opportunity for recourse to the courts. You used the example

of the M74, which is perhaps not one that I would have chosen, but it is an example of how things can go if it is felt that the process has gone awry.

In Scotland, we currently operate a system whereby significant development projects that go through the planning regime or the process of consent under the Electricity Act 1989, such as power station inquiries, wind farm inquiries and major regeneration projects, some of which have budgets of hundreds of millions of pounds, are subject to the sort of process that I am advocating. In that process, an independent reporter with specialist expert knowledge in his or her field—or perhaps more than one—hears evidence and makes recommendations to the relevant minister. As far as I am concerned that process works very well in practice. I do not see why a distinction should be drawn between major development projects of that nature and this proposal, which—ultimately and in the general scheme of things—is on a relatively small scale.

Fergus Ewing: I am unsure about a couple of issues, but perhaps Mr MacLeod can help me out. Your written submission confirms that

"A bridge to Bressay has been an aspiration of Shetland Islands Council since the mid 1970's"

and states that

"corridors are safeguarded in the current Shetland Local Plan. The project is also specifically listed in the Council's Corporate Plan and the Local Transport Strategy."

That has been the case for four decades now. Why has not the council submitted a proposal to Parliament to deliver that project?

Ewan MacLeod: If you are talking specifically about the current project, the answer is that, when the initial orders were promoted—the roads order in particular, which is the one that triggers the private legislation aspect that I am here to discuss—an objection was received from the Lerwick Port Authority. The council, as a responsible local authority, undertook significant consultation and discussion with the port authority, and has embarked on a process of facilitation in an effort to remove the port authority's concerns and ultimately to remove its objection to the proposals. Sadly, that has not been possible, and we are only now at the final stage where it has become apparent that the council has no option but to pursue the private legislation route. I hope that that answers your question.

Fergus Ewing: It does not really, because you stated in your earlier evidence—unless I misunderstood or misheard it—that applications had been with the Executive in 2004. What puzzles me is why the applications had to be submitted to the Executive—a local authority can be a promoter and local authorities have been and are promoters, so why bother with the Executive?

Could not Shetland Islands Council simply have come to Parliament, as other councils have done, to be the promoter of its project?

Ewan MacLeod: There is probably a significant issue of the legislative competence of any such act. The only reason that an act of Parliament—a Bressay bridge bill, if you like—would be competent at this stage is because of the provisions of the Roads (Scotland) Act 1984, which invoke special parliamentary procedure. Without an objection from the Lerwick Port Authority, because of the bridge's impact on navigation, the council can competently promote a roads scheme under the current roads legislation, can competently promote an order seeking to interfere with navigation under the Coast Protection Act 1949, and can competently promote the relevant orders under compulsory purchase legislation. That being the case, it is my understanding that the Parliament would most likely say that there was no need for a private bill because the council had sufficient powers under other pieces of legislation. The distinction that I would draw between that and the likes of the Edinburgh tram bills, for example, is that, in the case of the tram bills, the City of Edinburgh Council did not have all the powers that it required to construct and operate the tram. That is why a private bill was sought in that case.

Fergus Ewing: I am still pretty puzzled, because your written submission states that

"section 76 of the 1984 Act requires the consideration of the Road Scheme to be subject to special parliamentary procedure."

That seems absolutely clear and I was trying to understand your paper on the basis that Shetland Islands Council's view of the law—presumably informed by Shepherd and Wedderburn—is that you need to have the parliamentary procedure. However, you have gone on to say that you suspect that the Parliament would take the view, for other reasons, that the procedure would not be appropriate. Is not that more of a legal dispute than a policy issue? Am I wrong in understanding that the failure seems to be on the part of the council, for not coming forward with its proposal in the way that other local authorities have done?

Ewan MacLeod: If the council had promoted an order under the roads legislation and there had been no objection from the port authority, there would have been no requirement for private legislation and the special parliamentary procedure would not have kicked in. If the council had promoted an order under the roads legislation and the port authority had objected, but if, through the negotiation and facilitation process, it had been possible to remove the port authority's objection, the special parliamentary procedure would not have kicked in either. The special

parliamentary procedure would have applied only if the port authority had objected to, and had maintained its objection to, the proposal under the roads legislation. It is as a result of—I do not want to use the word "failure"—the fact that the facilitation process has not been able to resolve the issues that we are now at a stage where a private bill is required.

Fergus Ewing: I understand that the parliamentary procedure is required because there is an unresolved objection. However, almost every proposal that has come before the Parliament has attracted a substantial number of objections—there were major objections to the Edinburgh Airport Rail Link Bill—but that has not stopped local authorities or conglomerates of local authorities employing an agent and bringing forward proposals. For how long has the objection been extant and for how long has it been clear that the objection has not been capable of being resolved? If that situation arose in 2004, should not the council have sought parliamentary time for the Bressay bridge proposals in 2004?

Ewan MacLeod: Part of the difficulty with seeking parliamentary time at that stage is that an informal policy operates within the Parliament that does not allow for more than three private bills to be before the Parliament at any one time. I understand that that is because of the imposition on parliamentarians' time. I believe that since the introduction of the private bill procedure, which currently still applies, there have always been three private bills before the Parliament, so there simply would not have been space for the proposal in the parliamentary timetable. The discussions have been going on for some time and the Scottish Executive has encouraged them to continue, probably in an effort to avoid the situation in which we find ourselves.

Fergus Ewing: No doubt the Minister for Transport will enlighten us when he comes before us next month.

The Convener: That brings us to the end of questions for the panel. I thank Ewan MacLeod, James Fowlie and Councillor Chris Thompson for their time.

Regulatory Framework Inquiry

16:27

The Convener: Agenda item 3 concerns the Subordinate Legislation Committee's inquiry into the regulatory framework in Scotland. That committee has now published a draft report in which it makes a number of proposals, including a recommendation for a new system called the Scottish statutory instrument procedure. The committee has the opportunity to comment on those draft proposals. Do members wish to submit any comments? We have until 22 September to finalise any comments. If members want to make comments now, we can incorporate them in a letter from me to the convener of the Subordinate Legislation Committee. If members do not have any general points to make now but want to make detailed comments on the proposals, they can submit them by e-mail or in writing to the committee clerk. Provided that such comments do not conflict, we could set them out in a letter, which we would bring back to the committee before 22 September.

Mike Rumbles: I have one fundamental point to make. Given my experience on other committees, it would be helpful if the committees had the authority to amend subordinate legislation.

The Convener: I would want to look carefully at what the Subordinate Legislation Committee said in that regard. I understand that that recommendation is not being made at the moment. I do not know the reasoning for that, but I know that the issue has been considered. We will note your suggestion but, before committing myself to a position, I would like to consider the issue in more detail. I suggest that I bring a draft letter to the committee and that we can debate whether the committee as a whole feels that that would be an appropriate suggestion for us to make.

Members should e-mail comments to the clerks by Wednesday 16 September. That will enable the clerks to draw together the comments and see whether there is broad agreement on points. If there is not, we can consider the alternative ideas at our meeting on 19 September.

Subordinate Legislation

Firefighters' Compensation Scheme (Scotland) Order 2006 (SSI 2006/338)

16:31

The Convener: No member has raised any points on the order, no points were raised by the Subordinate Legislation Committee and there are no motions to annul. Do we agree that we have nothing to report?

Members indicated agreement.

Firefighters' Pension Scheme Amendment (Scotland) Order 2006 (SSI 2006/342)

The Convener: Again, no member has raised any points on the order and there are no motions to annul. The Subordinate Legislation Committee drew the order to our attention and the relevant extract from that committee's report is included in our committee papers. Do we agree that we have nothing to report?

Members indicated agreement.

Witness Expenses

16:33

Meeting continued in private until 16:43.

16:32

The Convener: Agenda item 5 concerns witness expenses in relation to our scrutiny of the Transport and Works (Scotland) Bill. Normally, at the start of an inquiry or the consideration of a bill, the committee agrees to delegate to the convener decision-making powers with regard to requests that are made by witnesses for their expenses to be paid by the Scottish Parliamentary Corporate Body. Is the committee happy to delegate responsibility to me for approving any such claims in relation to that bill?

Members *indicated agreement.*

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