

# **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE**

Tuesday 12 September 2006

Session 2

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## **LOCAL GOVERNMENT AND TRANSPORT COMMITTEE**

**21<sup>st</sup> 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:**

Susan Clark (TIE Ltd)

Alex Macaulay (South-east Scotland Transport Partnership)

Douglas Muir (Midlothian Council)

Kevin Murray (TIE Ltd)

Bruce Rutherford (Scottish Borders Council)

### **CLERK TO THE COMMITTEE**

Martin Verity

### **SENIOR ASSISTANT CLERK**

Alastair Macfie

### **ASSISTANT CLERK**

Rebecca Lamb

### **LOCATION**

Committee Room 3



# Scottish Parliament

## Local Government and Transport Committee

*Tuesday 12 September 2006*

[THE CONVENER opened the meeting at 14:01]

### Transport and Works (Scotland) Bill: Stage 1

**The Convener (Bristow Muldoon):** I call today's meeting of the Local Government and Transport Committee to order. We have received apologies from Tommy Sheridan, David McLetchie and Sylvia Jackson, and Maureen Watt has informed us that she will be late because she has been delayed on her journey to Edinburgh.

The only item on the agenda is further consideration of the Transport and Works (Scotland) Bill at stage 1. I welcome to the meeting Bruce Rutherford, who is the Waverley railway project director and who works for Scottish Borders Council, and Douglas Muir, who is the transportation policy manager for Midlothian Council. I invite you to make introductory remarks. I expect that you will want to tell us about your experience of progressing the Waverley Railway (Scotland) Bill. As well as that, perhaps you could comment on how you think the Transport and Works (Scotland) Bill will affect how such projects are advanced in the future.

**Bruce Rutherford (Scottish Borders Council):** We have no prepared notes—we bring just our experience to the table. I invite members to ask questions and I look forward to a lively debate. We are survivors of the private bills process and we have the scars to prove it. Our experience should be beneficial to people who follow us.

The fact that Douglas Muir and I have been involved in the Waverley project since the early 1990s reflects how long major projects sometimes take to come through the various stages, beginning with the structure plan and the local plan. Our work has included participation in feasibility studies, early consultation and the option appraisal process, in which Scottish transport appraisal guidance criteria are used to decide which route and which mode of transport would be best. We have been involved in the preparation of environmental statements and an appropriate assessment on the length of the route that runs through a special area of conservation.

As well as giving evidence on the general principles of the Waverley Railway (Scotland) Bill at the preliminary stage, we provided further

evidence at the consideration stage and attended the parliamentary debates, so we have some knowledge of the proceedings that take place in public. We are more than prepared to take questions on the range of activities in which we have been involved.

**The Convener:** Thank you for those remarks.

What advantages do you envisage the Transport and Works (Scotland) Bill will bring? If you had been able to operate under the new regime rather than under the private bills system, how much improvement in the delivery time would there have been?

**Bruce Rutherford:** Both of us will have comments to make, so we will just jump in. If you would like us to expand on anything, we would be more than happy to do so.

The private bills system proved to be successful for us, but we found it tortuous. One member mentioned in the final stage debate that the process took two and a half years, so any system that would cut the length of the process would be beneficial. The fact that the new approach—which involves people sitting round a table with a reporter—is similar to the one that is adopted in planning inquiries will be an advantage. It will certainly mean that people are more focused, we hope over shorter timeframes.

As well as giving evidence to the committee, I am involved in a local plan inquiry back in the Borders, which is concentrated into three months. If we can use the proposed legislation to shorten the period for consideration of projects, so that everyone is at the table at the same time to discuss it, that will be very effective.

**Douglas Muir (Midlothian Council):** I echo Bruce Rutherford's sentiments. This is not a criticism of the parliamentary process, but our approach was dictated by parliamentary timescales, which include summer recesses and so on. That made it difficult for the promoter to plan its workload and to keep moving forward, and it made things difficult for the objectors. We spent a considerable amount of time bringing MSPs up to speed on technical issues that a technical person might have been able to deal with more quickly. That is no criticism of MSPs—I would be in the same position if something that I did not know or understand were thrown at me. Much time was spent on covering background; I hope that the proposed new process will speed that up.

We dealt both with objectors and supporters of the Waverley project, quite a few of whom were put off by the formal parliamentary process. A more relaxed environment involving a reporter might suit such people a bit better. They might open up more, which would produce a better debate. We also had a problem in that we did not

have the opportunity to cross-examine objectors when they said something that was obviously wrong. In a reporter's inquiry, we can tease out exactly what objectors mean or question the line that they have taken. We were able to do that only in written evidence that was submitted to Parliament after the event, which made it difficult to follow a line of conversation.

**Bruce Rutherford:** We quickly discovered a problem that we christened "people pain". People really suffered because of the time it took to get through the process. Some people had lived with the project for two or three years before we came on the scene to try to deliver it through Parliament. People would ask simple questions, such as whether they should paint their outside windows, because there would have been no point in their doing that if their house was to be bought. However, we could not provide them with certainty about when the project would be delivered and whether it would be a reality within two or three years.

There is another issue that affects discussions with the general public. When taking forward a private bill, one has only so much detail on the design of the project, because promoters will not commit to spending £2 million or £3 million to work up full detailed designs unless they know that the project will go ahead. I do not know whether the situation will be different under the proposed legislation. People expect us to give them answers in minute detail; they may want to know whether a fence will be put at the bottom of their garden. We have to try to manage such questions. In the planning process, people are aware that we do not always have such details, so adoption of that model may help us to manage expectations. It will not cut out all the pain that people experience, and they will continue to have issues hanging over their heads, but they will understand what point has been reached in the life of the project.

Another issue—which we still face—is access to land. Under the private bill process, we have no powers of land entry at an early stage in a project, so we are delighted that such powers will be included in the new order-making system. It is important to ensure that promoters have statutory powers of early land entry. When they are working up the details of proposals, they may want to speak to landowners about ownership, to carry out topographical surveys or to do preliminary geotechnical work: they need the power of entry to do that. At the moment, we have to buy our way in. We have to negotiate on every occasion with every landowner. Over the length of the Waverley route, 465 landowners are directly in the path of the railway. Some are more helpful and considerate than others, but if people oppose the scheme, it can be difficult—if not impossible—to negotiate with them to get detail.

Land Aspects Limited carried out the land referencing for us. We came across one or two real difficulties. One of the first was that there is no obligation on landowners, tenants, property owners or agents working on behalf of landowners to fill in the forms in an honest fashion. That is not to say that they did not do so, but we know that one or two of the returns that we got were vague to say the least, and downright unhelpful in some instances. We have to establish ownership of the land at an early stage.

**The Convener:** Thank you. That was a comprehensive reply.

**Paul Martin (Glasgow Springburn) (Lab):** Douglas Muir referred to the committee's ability to tease out information, given some of the specialities that are involved. How would a reporter do that differently? What information could a reporter extract that a group of MSPs could not?

**Douglas Muir:** I do not think that there was a problem with teasing out information; the committee did a very good job of teasing out information from us, but we spent quite a lot of time explaining some of the technical issues. That is natural, because we were talking about technical aspects of railway design and operation, which are difficult for a lay person to grasp. The committee was good at drawing out information from us; it obviously had advisers in the background who helped with that. The issue was more the time that was spent explaining things. If the reporter was a technical person, such as an engineer or railway person, we would not spend much time discussing how signalling systems work, for example. The new process might save time in that regard.

**Paul Martin:** You are expecting a specialist for each inquiry. For a roads project, you would want the reporter to be a roads engineer, but there will be aspects of technical information on which a reporter will not necessarily be an expert.

**Douglas Muir:** That is correct—I would not expect a reporter to be an expert on everything, but I would anticipate their being a specialist in at least the major part of the project. Although we promoted a railway scheme, we have had to divert roads and provide car parks, so we have had to deal with roads issues as well as rail issues. However, the rail issues were predominant. A road scheme might involve crossing a railway, so there would be an interface with rail, but I would expect the reporter on such a scheme to be a specialist in the road aspects.

**Paul Martin:** You referred to the procedures that were involved and to parliamentary recesses. I do not know of any planning inquiries that have been over in two weeks; they tend to last a considerable

time. Most inquiries that I have been aware of have been extensive; they have not been rushed through, but have involved detailed examination. What timescale would you attach to the new process? Would it save six weeks or a year, for example?

**Douglas Muir:** I do not know whether a huge amount of time would be saved in the process. If the reporter is doing his job properly he will be taking evidence from all parties and weighing it up. The difficulty that we had with the parliamentary process is that we were working to parliamentary years. As we approached a recess, the work was heaped on the promoter to get finished by a certain time. If there is a strict deadline, the quality of work might not be the best, because people must work late into the night to produce it. There would be slightly more flexibility with the reporter process. Although one would not let the process stretch on for ever and a day, if it were to overrun by a week or a fortnight, that would not be too important. When Parliament closed, we had to stop for two weeks, then start again when it resumed. It was difficult for the promoter to organise its workload in that regard.

14:15

**Paul Martin:** Would you prefer that the process was open ended instead of there being a target that was tied to the parliamentary timetable?

**Douglas Muir:** Yes—but that process would be open ended only to a degree. We could go on debating something for ever and a day and never really reach a conclusion, so reporters must be able to say that they have taken enough evidence and so will not continue. With the Waverley Railway (Scotland) Bill, some objectors would have repeated their objections endlessly, so the process got quite difficult. It is useful to have an end date, but perhaps not quite so rigid a date as is set by parliamentary years.

**Paul Martin:** Much of the bill is intended to deal with stresses on the promoter such as you mentioned. Do you accept that there is sometimes an issue with a promoter's capacity to progress a private bill? It has been mentioned that the promoter will not always be able to deal with the demand at the start of the process for information that will be needed throughout the process. Will not that be the same even if a reporter is involved?

**Bruce Rutherford:** Douglas Muir has touched on the fact that it took us two and a half years to get the Waverley Railway (Scotland) Bill through Parliament. There were at least two summer recesses in that period. Although we were working in the background, we never felt that the business was making progress towards approval.

In the local plan inquiry that we are currently going through in the Borders, two reporters are collecting evidence in a three-month block. We are going all out to deliver the evidence and to react to questions within those three months. After Christmas, there will be another two months for summation. The process does not really stop; we work five days a week at the table with the reporters.

In contrast, for the Waverley Railway (Scotland) Bill we were in Parliament every Monday, then we had week to put together answers for questions that we could not answer on that Monday and were back in Parliament for the next Monday. The cycles were weekly, but we were only at Parliament on a Monday. Not all the team was tied up in replying to the questions—much of our other business carried on regardless. The promoter's teams always have scope to deliver day after day if they have to. They would just concentrate on satisfying the demands that were in front of them if they were working five days a week on that.

**Douglas Muir:** I have not had a chance to read through the proposals in the bill in detail, but it appears that the bulk of the work that the promoter has to do will be done in advance of an order's being made, whereas we submitted certain things at different stages as we went through the private bill process. A promoter will not save much time at the beginning of the process, because it will probably have more work to do before the process starts, but I am hopeful that once the process starts the promoter will get through it more quickly because it would not be continually bringing in fresh evidence or documentation. The promoter might be asked for some explanatory documentation to back up what it has submitted, but the bulk of the information should already be lodged with the reporter.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** I will go back to a couple of the points that Bruce Rutherford made on the problems that he encountered in going through the private bill process without statutory powers—in particular, without powers of access to land. I think he said that that had led to difficulties on one or two occasions. Will you illustrate, without mentioning particular owners—unless you feel that there is no problem in doing so—the practical problems and why access to people's land was needed in each case?

**Bruce Rutherford:** We needed access to land to carry out environmental surveys. We had to find out what species of flora and fauna were in a given area to ensure that none of the engineering features that we were introducing would damage the environment. That was done through appropriate assessment under the European directive on the conservation of natural habitats

and of wild fauna and flora, but we need to access the land to find out what is there before we can take due cognisance of how to treat it and try to mitigate against any effects that would produce a negative result.

One landowner owned about a mile and a half of the river. Because the route of the railway line almost follows the river's course and crosses the river on dozens of occasions, we had to get access to that land, but he simply would not allow us to get in there. We could not get access to such a high proportion of the length of the river that we had real difficulties—we had to tell Parliament that we had done the appropriate assessment, but that we had not had access to that section. It was only through the intervention of local councillors, including the leader of the council, that we managed to convince the person that we should have access to the land. He eventually came round to the idea—I think his wife convinced him that he should give us access—so we were relieved about that. A similar situation arose with two or three landowners, but that one landowner owned an appreciable length of the river.

We still have difficulty getting access to land. As we are working in a railway corridor, we work within limits. All our early work was to define the limits. We then went to Parliament and said that those were the limits within which we wanted to work. We got the powers to do that, but now, as we go back to do more environmental work, problems arise. We have found kingfishers that fly a kilometre in either direction of the land over which we have powers, so we have to go out with those limits to determine whether the scheme will have any detrimental effect on their habitat. Although we now have powers under statute, we have still to negotiate with landowners.

I do not know how such issues could be captured at the beginning of the process. In the Borders, we would end up going over the hill and far away, because we work in whole valleys.

**Fergus Ewing:** You did not mention the identity of the landowner, but I imagine that it would not be too difficult to find that out from the information that you gave. Section 18, which is on access to land, will give wide powers; indeed, non-compliance with section 18 or wilful obstruction of the exercise of those powers will perhaps be an offence. That is to be welcomed.

I have a question for both witnesses on timing. Such projects are complex and take excessive time. We need to consult and generally take people with us but, nonetheless, 10 or 12 years is too long. To be frank, the public do not have clue about the length of time that is involved. That is my perspective, but you have hands-on involvement in a project. How might the overall process for considering such projects be

shortened? If the bill goes through, one beneficial effect will be that you will not have to deal with MSPs, although that is always a pleasure, and you will not have long waits while we have long holidays, which will be good. I presume that the independent reporter will work continuously until the job is done and will deal with the work in a much more compact fashion. Do you have any ideas about how we can speed up the process in other respects? I am sure that people would wish us to do so if at all possible for major national projects that are of strategic importance, most of which receive support from throughout the parties.

**Douglas Muir:** The whole process is an issue. I will concentrate on rail projects, because we have just completed the parliamentary process for a rail project. Way back in the early 1990s, various studies were carried out to determine what would help to regenerate the Borders—the rail line emerged as the thing to do. From that point, we had to get funding to put the bill through Parliament, which at that time meant a bid to what was called the public transport fund. We carried out a feasibility study, which showed that the project would work, and we then had to convert that feasibility study into a bid for funding to take the bill through Parliament. Once we were awarded the money, we started on the bill process, which in itself took about five or six years before we even started the parliamentary part.

Anything that could speed up the process would be helpful. We do not have the public transport fund now, but Transport Scotland has been set up, so there may be mechanisms to get funding agreed much more quickly, especially with fairly large schemes, which Transport Scotland can promote. We should be able to cut out some of the early stages. I do not suggest for a minute that we should not carry out procedures such as feasibility studies, which are important because there is no point spending a lot of public money on something that will not work.

The whole process that we had to go through before we even got to Parliament was lengthy. It would be good to shorten that process; the bill looks as if it might be able to do that. Many of our negotiations with landowners took a tremendous amount of time, so if we could cut down on that it would speed up the whole process.

Many residents in Midlothian have been thoroughly sickened by the length of the process. As Bruce Rutherford has said, people did not know whether they could paint their windows or replace their central heating. That was awful for them.

**Fergus Ewing:** Why did negotiations with landowners take so long? In the cases that have led you to draw your conclusion, could the time

have been reduced? If so, how? Did you lack powers of compulsory purchase?

**Douglas Muir:** We lacked powers. Powers to purchase come only when the act is passed, so we did not need to purchase ground at the time. However, we had to access ground in order to carry out various surveys. As Bruce said, some landowners were open and helpful in letting us on to their land, but others who were objectors to the bill just refused. Until we got permission to go on to land, we could not carry out surveys; and if we could not carry out surveys, we could not do half the work. It appears that the Transport and Works (Scotland) Bill will give us the powers to go on to land.

**Fergus Ewing:** It will.

I understand that on roads projects such as the M74 there were legal powers to enable negotiations on compulsory purchase; indeed, it has emerged in the press that some negotiations were carried out before the M74 inquiry. Such powers appear to exist for certain roads projects and can be exercised before an inquiry takes place. Are you saying that that is not the case for rail projects?

**Douglas Muir:** That is correct. We have compulsory purchase powers for rail only after a bill giving the powers is passed and becomes an act. Under the Roads (Scotland) Act 1984, the roads authority has the power to go in and make a compulsory purchase of ground. That power does not exist for railways, so we cannot go in and buy the ground first, which would obviously give us the right of access. We have to wait until a bill is passed before we have the power to buy the land. We have also had to go on to the land beforehand, so we end up in a circle that we cannot get out of.

**Fergus Ewing:** The new bill will provide statutory rights of access to an applicant on application to the Scottish ministers, but will it confer compulsory purchase powers prior to the involvement of the reporter?

**Bruce Rutherford:** No, I think that the order has to come first, then compulsory purchase powers will be conferred.

**Fergus Ewing:** So there is an imbalance between road and rail.

**Douglas Muir:** Absolutely.

**Fergus Ewing:** For road projects, the state has more powers over my land than it has for rail projects. Why does it not have powers for rail projects?

**Bruce Rutherford:** I have been in the road business for 30 years and the railway business for about five years. When we build road schemes, they go through really quickly. The difference

between road schemes and rail schemes is amazing; that has been really frustrating for me, Douglas Muir and the rest of the team. For some reason, as soon as you have a vision and a good idea for building a road, people say, "Yeah, that's a good idea." You do not have to prove that it is a good idea; you just build it. On the other hand, when trying to build a railway, you have to go through all the hoops—of legislation, of politics, of economics—to prove the case on way or t'other. In the early stages it is extremely difficult to prove that any mode of transport is a goer but, for some reason, rail has to jump through a dozen hoops whereas road goes through almost on the nod.

I know that I am oversimplifying, but if you are trying to promote a project, a rail project is more of an uphill struggle than a road project.

**Fergus Ewing:** They should have put you in charge of the M74 project. [*Laughter.*]

**Bruce Rutherford:** Yes.

**Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** Do you consider the Waverley Railway (Scotland) Act 2006 to be of national significance?

**Bruce Rutherford:** Yes, we do.

**Mike Rumbles:** If the councils were engaged in a project that was not of national significance, it seems from the Transport and Works (Scotland) Bill that work could go on for several years; there could be a public inquiry; the reporters unit could produce a report; and the project could then go to a minister who might just say, "Sorry. Thank you very much, but away you go." You could work for all that time but one person could just block the whole project, for whatever reason, and not even tell you why.

All the questions so far have been on the one side of the coin, such as Fergus Ewing's questions about speeding up the process and so on. My question relates to the other side of the coin—the democratic process. What about the people whose lives will be affected by such projects? Where is the democratic input? Further, from the perspective of civil servants and council officials, can you say whether there might be a danger that too much power might be handed to one person?

14:30

**Bruce Rutherford:** If it can be decided quickly that the project is a goer, people will know where they are. After that stage, everything should be about the delivery of the project.

It is easy to convince people who want a project to go ahead that it is going to happen. However, there is a difficulty in convincing people who do not want a project to go ahead that it will be what

we call a real project. It can take a long time and, sometimes, almost a leap of faith to deliver it. That is really painful for the people who are involved. I agree that we need to try to shorten the time in order to give people an understanding that there is a mechanism that they can use to get out if they want to, either through advance purchase or voluntary purchase. That can help to take away their pain. We have always felt that the beginning of the process is quite long, but it also takes ages to get the design completed and to get compulsory purchase powers.

It took us two years to get a land bank together and it will take another three years to build the project. Starting from now, it will take us a minimum of four years until the first train is running on the track. However, people might still be living there until the minute their property must be taken from them.

If we could get to a stage in the process at which everybody would agree that the project was going ahead, all the forces behind it should drive it to delivery as quickly as possible, which will help people to move on with their lives.

**Mike Rumbles:** Perhaps I did not phrase my question particularly well. I will rephrase it and approach it from a different perspective.

Under this new legislation, you will apply for permission to start a project that is not a scheme of national importance and the minister will give you the right to proceed with it. The same person who gives you the go-ahead in the first place will give you the go-ahead at the end, without parliamentary scrutiny or any democratic input. Surely that cannot be right.

**Bruce Rutherford:** At an earlier stage, we will have gone through the structure plan process and the local plan process and we might well have been involved with the south-east Scotland transport partnership on a regional strategy. Each of those three processes—and there might be others—will have involved a democratic process and consultation. It is perhaps not for me to judge whether such consultation is sufficient to enable a project to go ahead, but certainly consultation will not be avoided by going ahead with a project early. If a project is blocked later in the process, an awful lot of work has already been done and expectations have been raised. If decisions are made before that stage, projects should not be blocked; they should be allowed to run and be delivered as quickly as they can. I know that we do not live in a perfect world and that things do not always work out as we want them to, but early decisions make things happen.

**Douglas Muir:** The process leading up to the final stage is quite democratic—the public are involved in the consultation and can object, and I

would hope that the reporter would deal with that in a fair manner. At the final stage, it would be a bit worrying if the reporter who had taken all of the evidence suggested that the scheme should go ahead but had his decision overruled by one person who has decided that it should not.

**Mike Rumbles:** If you are happy for schemes that are not of national significance to go through the process, why should schemes of national significance have to get the Parliament's approval? The system should be the same, should it not?

**Bruce Rutherford:** I am not sure whether I know the difference between national significance and local significance, to be honest. The Waverley project started locally but it ended up on the minister's list of the top 10 projects to be delivered in Scotland. We always considered it to be of national significance because the weight of the minister's powers and the Parliament were behind it. Projects should go through the same process, but a lot of projects start locally.

**Douglas Muir:** The other thing that might dictate what happens, to a degree, is finance. The scale of projects might lead to differences. I was going to say that local projects tend to be at the lower end of the scale and are not as costly, but then I thought about the trams and decided that that is probably not correct. Nevertheless, the bulk of local schemes are at the lower end and so, perhaps, do not have national importance. If we are talking about spending significant sums of public money, that is perhaps something that the whole Parliament will want to be involved in. We can probably do only two or three of the large schemes that cost £500 million, but we can do a raft of smaller schemes. Perhaps there should be some financial judgment in place to identify projects that are bigger than a certain size.

**The Convener:** We need to explore with the minister what is of national significance and what is not. It seems to me that, if a council promotes a small rail scheme that involves a line to link a distribution depot to the rail network, that would be regarded as a local initiative. If we build a new passenger rail line that links into the whole network, that might be regarded as local because it will serve the local area—in your case, the Borders—but it is probably of national significance because it will have contact with and an impact on the national rail network, for example at Edinburgh Waverley. We need to get more information on the definitions from the Executive, but do you regard as legitimate my reasoning on the differential between a local scheme and a national scheme?

**Bruce Rutherford:** I do not have a clear view on that, to be honest, I suppose because we have lived with a local scheme that became a national scheme. That is why I said that I regard them as

almost the same thing. There must be a stage at which a project gains national significance. We started with an idea, we developed it and we got other people involved in it. The next thing we knew, it was in a list of projects of national significance. I suppose that, if the process is the same, it must be correct.

**The Convener:** That completes our questions. I thank Bruce Rutherford and Douglas Muir for their helpful evidence and congratulate them on the success that they have achieved to date, certainly in helping to pilot their bill through the Parliament.

**Bruce Rutherford:** I take the opportunity to thank all the MSPs who voted for the Waverley Railway (Scotland) Bill to be passed.

**The Convener:** We move on to the second panel. Kevin Murray, from TIE Ltd, is senior project manager for the Edinburgh airport rail link and Susan Clark, also from TIE Ltd, is the delivery director for the Edinburgh tram. I welcome them to the committee and give them the opportunity to make introductory remarks about their experience of the existing private bill process and about how they feel the proposals in the Transport and Works (Scotland) Bill will take the process forward.

**Susan Clark (TIE Ltd):** Despite our job titles, most of my experience of the private bill process has been in relation to the Edinburgh airport rail link project, whereas most of Kevin Murray's experience has been on the tram project. We have switched camps.

TIE welcomes the opportunity to give evidence to the committee and supports the proposals. TIE has been involved in three of the private bills that have gone through or are going through the Scottish Parliament, so it brings to the table experience from those three projects. The comments that we made in writing and our comments at the meeting today are based on those experiences.

The current private bill process is lengthy and complex for all concerned: the Parliament, promoters and objectors. Despite the length and complexity of the process, everyone has coped with it and much has been learnt. However, although we have been through a learning curve and the process is now operating fairly well, TIE supports the proposals for change. We have a number of reasons for doing so.

First, the proposals recommend moving to a set of dedicated rules—akin to the planning process—which are more widely understood by a wider audience. We believe that people will engage much more with the new process. It is much more easily understood, which will allow greater engagement by all concerned.

TIE applauds the recommendations on public consultation. It has striven to introduce such an approach, particularly for the Edinburgh Airport Rail Link Bill, because of what we have learned from previous bills. As a result, we published the draft EARL bill for consultation before it was introduced. We were then able to make a number of changes and could tell people what changes we had made as a result of the consultation process. We strongly support public consultation.

The link with planning is important. Parliament has struggled with the enforcement of the obligations that private bills place on promoters. The way around that that has been found is to put enforcement in terms of planning conditions. We believe that what is proposed in the bill aligns itself with that much more readily.

I have said that the current private bill process is lengthy and complex. We believe that an inquiry process is likely to generate much more paperwork and will focus on much more detail. There is a tension between the timescale for the private bill process and the expected timescale for the new process, but one proposal that will militate against the timescale being lengthened is the ability to appoint multiple reporters to deal with issues in parallel. That is to be welcomed.

Finally, previous witnesses have commented on access to land and we strongly support the proposals on that. Kevin Murray could probably add to my comments, but for EARL it has at times been difficult to negotiate access to land when we have no powers. One reason in addition to environmental reasons why promoters like to access land in advance is to understand some of the risks associated with a project. For the EARL project, one of the major risks was the amount of tunnelling and deep excavation. As part of the overall risk management process, we wanted to access land to carry out geotechnical investigations to understand the risks involved in the project and the suitability of the land for it, so that we could understand how to manage the project costs. Having powers to access land in advance of having an act will help us to manage the process more effectively.

14:45

**The Convener:** Thank you for those introductory remarks.

You will have heard our questions to the previous witnesses about projects of national significance. First, what do you expect to be regarded as projects of national significance, and what do you expect to be defined as more regional projects? Secondly, do you think that the right balance has been struck in not subjecting to

parliamentary scrutiny projects that are not of national significance?

**Susan Clark:** I would reflect the comments made previously. The devil will be in the detail and in the criteria for nationally significant projects. EARL was a project that linked Scotland into Edinburgh airport and crossed local authority boundaries, so I think that it would fit the criteria for a nationally significant project, and although the tram scheme is contained within the Edinburgh area, its cost could trigger a requirement for it to be dealt with as a nationally significant project. What is required is a definition of the criteria for a nationally significant project.

**Michael McMahon (Hamilton North and Bellshill) (Lab):** Having looked at the bill, do you think that it contains enough detail for you to have confidence that it will address your concerns? Has the proper balance been struck between subordinate and primary legislation?

**Kevin Murray (TIE Ltd):** The bill is generally well structured and the policy behind it is well placed. There is more to follow, and we look forward to reviewing that when it becomes available. In principle, the bill will serve its purpose well.

**Michael McMahon:** So there are no concerns about giving powers to ministers without their exact nature being clarified. What is your experience of disengagement from the parliamentary process in relation to other transport initiatives?

**Kevin Murray:** From our experience of the tram project, I suspect that the important points are about public consultation, awareness within communities and the wider public interest. Reading around the evidence given before today, I see the importance of the STAG process and the consultation that that engenders, of considering different options and of ensuring that the scheme that the bill produces is appropriate. A lot of emphasis should be put on that.

That approach will perhaps address some of the concerns that we heard earlier about the level of consultation and public representation. Combined with the opportunity for those affected to object formally and for those objections to be heard by a reporter, it will build on the work that has been done on private bills to date to develop consultation and listen to the concerns of affected parties.

On whether the process sides with ministers, I think that the bill is currently well structured and that the definition of projects of national significance is probably appropriate.

**Mike Rumbles:** In your written submission, you said:

"it is sensible to suppose that Transport and Works inquiries will be broadly similar to planning inquiries. Judging by the advice we have been given regarding the planning process, it delivers projects over a period that is at least as long as that for Private Bills, and probably longer."

Given the briefings that I and other members have received and other evidence that I have read, I have been under the impression that the advantage of the bill is that it will speed up the process. Of course, the corresponding disadvantage is that it will remove an element of democratic scrutiny from most of these matters. Am I right in understanding that you feel that the proposed process might well be longer, not shorter?

**Susan Clark:** I will lead off on that question and then see whether Kevin Murray has anything to add.

There is a risk that the process could be longer. However, over its life, the private bill process has speeded up as people have got used to it. To speed up the proposed process, the bill allows for the appointment of multiple reporters to deal with things in parallel. There is also an obligation on the promoter to ensure that, once an application is made, enough preparation has been done to allow the formal process to be as smooth as possible. The duration of the process can have a direct relation to the volume of objections, which can be managed by undertaking the detailed public consultation well in advance and involving the affected communities early on in the decision-making process so that, for example, unacceptable options can be ruled out.

**Mike Rumbles:** I am a little bit confused now. Do you still feel that the proposed process will probably be longer than the current process?

**Susan Clark:** I do not feel that it will probably be longer. It could be as long, but the bill contains provisions to speed up the process.

**Kevin Murray:** That is absolutely right. We should bear it in mind that, under the transport and works process in England and Wales, a number of inquiries have gone on for years and the private bill process for the tram proposals lasted 26 or 27 months. As EARL is in the middle of the scrutiny process, it is hard to say how long it will take—and, indeed, there are no givens—but at this point we are significantly further forward than we were with the tram bills. I suspect that for EARL the process will take 12 or so months compared with the 26 or 27 months that it took to deal with the trams. It has been an education for promoters and the process itself has been improved.

It is all about being prepared. Any case that goes through either the private bill or transport and works process should be subject to due scrutiny. In that respect, I draw members' attention to the

importance of the STAG process, which the committee has heard about. We must also ensure that there is adequate consultation. As Susan Clark said, we found it tremendously helpful to publish the draft bill for EARL, because it allowed us to flush out and deal with a number of issues early on. Both processes have their merits, but it all comes down to how they are structured and managed.

**The Convener:** If we compare major roads projects with major rail projects, it appears that the bill's reforms are likely to be advantageous. After all, since devolution, several major roads projects such as the M77 and the Glasgow southern orbital route have been completed but none of the really big rail projects has been finished, which suggests that taking an approach similar to that for roads projects might produce benefits. I am surprised by your concern that the process could be longer. Can you explain that?

**Kevin Murray:** I am not sure that I can explain the specifics. It all comes down to how the proposed process is structured. The bill itself sets out a particular framework. If there is a need to consider particular aspects of an order, and a couple of reporters are available to do so, that will definitely speed up scrutiny. A number of helpful elements in the bill, for example the provisions on access to land, will bring about greater confidence in the order that is brought for consideration and might reduce any uncertainties about the order when it is introduced. We are talking about building on the experience of the transport and works process in England and Wales and reflecting on our experience of the private bill process.

**The Convener:** The other aspect that is likely to improve the timescale for the completion of a project is the availability of parliamentary time. One reason for the delays that have occurred relates to the ability of the Parliament to run a number of private bills in parallel because of the pressures on the non-Executive bills unit and on individual MSPs, and the restrictions over which MSPs can serve on a particular bill committee. A reporter-based system would be able to deal with many such problems.

**Kevin Murray:** That is correct—there would be a dedicated resource.

**Mike Rumbles:** I want to ensure that I have got this right. You are saying that, just at the point when Parliament has matured, understands the private bills system and is getting better at it, we are going to go to a new system and that cutting off the learning curve, as it were, might elongate the process. Is that right?

**Kevin Murray:** That is not quite what I was saying. It is about ensuring that the schemes that

come forward are well prepared and that the scrutiny of them is structured. For example, the appointment of a number of reporters to consider various aspects of a scheme will bring experience and having a dedicated resource of that kind will move things along quicker. Reflecting on the Transport and Works Act 1992, in England and Wales, reporters are given a certain period of time in which to report; thereafter, it is down to decision makers to make the decision. That too needs to be timely. We need to reflect on what has happened with transport and works orders in England and Wales and see whether that can be improved upon in the bill.

**Mike Rumbles:** Having heard your oral evidence, I am more confused now than I was after I read your written evidence. Do you feel that the bill will not necessarily speed up the process and that it could take longer than the current system? Have I misunderstood you?

**Kevin Murray:** It could take as long, but the level of scrutiny that will be applied and the dedicated resource are probably more appropriate. Thereafter, ensuring that decisions are made quickly depends on the decision-making process.

**Ms Maureen Watt (North East Scotland) (SNP):** When we were talking about engaging the public, the previous witnesses thought that the public could get involved earlier, when there is discussion of the structure plan and the local plan. Is there a conflict there? in my experience as a councillor and in community councils, people do not get involved so much in local plans and structure plans because they represent broad themes rather than particular issues. Under the new system, we may have a situation in which the public do not get involved at an early stage and cannot get involved at a later stage, and so will feel completely out of the loop and unable to make a contribution, put up objections or get routes changed.

15:00

**Susan Clark:** The ethos of the planning system is to get communities and people involved in structure plans, local plans and so on at a much earlier stage of the process. If people believe that something will have an impact on them, they will get involved in the process. When developing structure plans and so on, it is up to local authorities and others to ensure that the process involves communities and local people. The onus is on the promoters of transport projects to involve people at an early stage of the process.

Our experience of the Edinburgh airport rail link project was that involving people at an early stage—even before we began the public

consultation process—reaped dividends. We were able to understand people's concerns and get their local knowledge, which we used to tailor the project to remove some of the concerns. There is an obligation on promoters and local authorities to try to engage people in the planning process.

**Ms Watt:** The bill suggests that parliamentary approval be extended to cover harbour developments. Do either of you have comments on that?

**Susan Clark:** No.

**Kevin Murray:** No.

**Fergus Ewing:** I want to ask these two witnesses about the same issue that I asked the previous two witnesses about: time. Both of the schemes with which you were involved—the Edinburgh tram scheme and the Edinburgh airport rail link—have been under consideration for several years and, were they to go ahead, it would take more years before a tram collected its first fare and the rail link carried its first passenger. From your experience, do you consider that some of the time that has been spent considering those schemes has been wasted? Could time have been saved? Were some procedures overly complicated or unnecessary? Can you offer us suggestions from your experience about how the public might get national projects delivered more quickly?

**Kevin Murray:** Certainly, the tram scheme has been around for a while. However, one must accept that due process is involved. The scheme is a council-promoted one and a decision-making process is embedded in the council's operations. There must also be due and adequate consultation. With a scheme of that nature, which goes through the city centre, it is hard to see how the process could have been speeded up.

I suppose that a more joined-up, end-to-end, seamless process might be helpful, as well as the ability to continue developing projects while they are progressing through the scrutiny process. That enables other aspects of the project to keep moving forward. I certainly do not think that either the tram scheme or EARL were delayed significantly, but that has been the case elsewhere when schemes have awaited formal approval before going on to the next stage of development. We certainly argued on the EARL scheme—if I can stray across to it—that aspects of the scheme ought to continue to be developed while the bill was progressing. We did that with the support of our major stakeholder.

Such an approach must be helpful in the overall life cycle of a project and enable it to keep moving forward. There are many aspects to a project. It is not just about the statutory approvals, although they are a key aspect; it is also about the continuing development of the project and the

readiness for procurement and for securing financial positions. I guess an overall, joined-up approach at an early stage can only help over the life cycle of a project.

**Susan Clark:** We have also heard about the constraints on parliamentary time and about what that has done to the bills that have been through the scrutiny process. There is a stop-start aspect to the process because of parliamentary recesses. However, the appointment of a reporter means that the process can be condensed into a shorter time. It will be intense, but it will be over in a short time, compared with having meetings one or two days a week over a longer period. That truncates the end-to-end process. It makes it intense for the promoter and the reporter, but it provides a much more informal environment for objectors, who might not be used to giving evidence as part of a statutory process. The proposed arrangements would make things much more relaxed for them.

**Fergus Ewing:** Mr Murray mentioned the processes of the council. I presume that it has procedures that must be observed, with notice, preparation, meetings and that sort of thing.

**Kevin Murray:** Absolutely.

**Fergus Ewing:** I am sorry if I am hitting you unawares with this; I do not particularly mean to, but I am just curious to know how long it took to get the two projects in question through the council's procedures. You said that the process took a long time. The alternative—this is my reason for asking—is that councils need not be promoters. Others might not need to go through procedures that take such a long time.

**Kevin Murray:** It was not a criticism; it was the reality. The process took a few months, rather than months and months. It is a question of due process. I do not think that there are many government bodies or bodies of a similar nature that can proceed without that due governance. I do not think that that process was overbearing; if anything I think that it was appropriate. Nonetheless, it built time into the process. However, the period was a few months, not more.

**Paul Martin:** I would like Susan Clark to elaborate on the informality of the reporter process. I appreciate that the parliamentary process may be considered to be formal, but where would the informality come in with the reporter? I have been to some such processes and do not remember them being informal.

**Susan Clark:** The setting is probably a bit more informal. It is fairly intimidating for a member of the public to come and sit in front of you ladies and gents at the best of times. People who are objecting to a bill might never before have been involved in such a process. Taking things offline with the reporter might make the process more

informal. It is part of the philosophy behind the bill to make people feel a bit more comfortable.

**Paul Martin:** Are you saying that the reporter would meet objectors in an informal meeting?

**Susan Clark:** No. It would not be an informal meeting. It would still be recorded, minuted and so on.

**Paul Martin:** There would still be a reporter and his team there.

**Susan Clark:** Absolutely.

**Paul Martin:** There would still be somebody keeping a record of the process.

**Susan Clark:** Yes.

**Paul Martin:** There is a good chance that the proceedings would be held in a town hall.

**Susan Clark:** They could be.

**Paul Martin:** Is there much of a difference? It would still be a formal process. For a member of the public who is not used to giving evidence, the only difference in the reporter process would be that they would not be giving evidence before the elected members of the Parliament. Why is it so frightening to go in front of elected representatives?

**Susan Clark:** I think that it is just a matter of perception.

**Paul Martin:** Have you had feedback on that from members of the public?

**Susan Clark:** Members of the public do a very good job when they come to give evidence, but it is not something that they do every day. Many people give up their time to give evidence, but without being trained to do so.

**Paul Martin:** Your concern is that, when members of the public attend a parliamentary committee, they are shy and retiring.

**Susan Clark:** They could be.

**Paul Martin:** It is your perception that people who come along to the Public Petitions Committee, for example, are shy, and that it is difficult for them to amplify themselves, but that if they went before a reporter, their evidence would be more robust?

**Susan Clark:** I am suggesting that that might make them a bit more relaxed—but not in all cases, as not everyone is shy and retiring.

**Paul Martin:** Is the evidence that you have received on that anecdotal? Have members of the public come to you and said that they wished that they did not have to come to the Parliament before a committee of MSPs and that it would be

preferable to speak to a reporter in a nice, informal setting?

**Susan Clark:** I suppose that that is the perception from my perspective.

**Paul Martin:** So that is your perception rather than the public's perception.

**Susan Clark:** Rather than being direct feedback from the public, yes.

**The Convener:** I am sure that the public would not be at all worried by Paul Martin's style.

**Paul Martin:** I was going to say that.

**Mike Rumbles:** Nobody would be scared of Paul.

**The Convener:** We have asked all our questions, so I thank Susan Clark and Kevin Murray for their evidence.

I welcome our third panel, which has a solo panellist: Alex Macaulay, who is the partnership director of the south-east Scotland transport partnership. I ask you to give an introduction on how you think that the bill will influence the delivery of railway and tram projects.

**Alex Macaulay (South-east Scotland Transport Partnership):** We have submitted written evidence, so I will not bore members with chapter and verse on that. As members are all aware, SESTRAN is one of the newly formed regional transport partnerships. It involves eight local authorities in the east of Scotland. I am here because I am SESTRAN's sole employee at present; we are building up the infrastructure to support the new body's operations.

The committee heard evidence from two SESTRAN partners today, Midlothian Council and Scottish Borders Council, and it is important to note that the City of Edinburgh Council and Clackmannanshire Council have also had experience of taking private bills through the present procedure for rail-based projects. The SESTRAN response was based on those authorities' experience and my experience as the project director of trams for TIE for the first 18 months or so of the parliamentary process to which Kevin Murray referred. That is the background to the written submission that the committee has received from SESTRAN.

SESTRAN's board considered the bill at its meeting on 18 August and is very supportive of the proposals in the bill. As members have heard, that support is based on clarity and certainty of process and a recognition of the pressures that are on parliamentary time to take a transport project through the current statutory procedure.

SESTRAN has several points to make that are intended to be helpful additions to the bill process

rather than criticisms of the bill. We have suggested that, although the current process for trunk road orders has proved successful over the years, the committee may wish to consider whether trunk road orders could be rolled up in the bill. The primary reason for that is that it would provide the opportunity to roll up the statutory process for obtaining powers to construct and operate a facility with any road traffic regulation orders and supplementary orders that are promoted through different legislation. That may facilitate the objective of cutting the timescale for developing projects.

SESTRAN accepts that it will not be a promoting body for trunk roads and it is for Transport Scotland to give you evidence on them. However, in the case of non-trunk roads, we envisage particular projects, such as bus rapid transit schemes, falling within the scope of the bill. Although such schemes are not rail-based, the buses could be guided. As you are probably all aware, in England and Wales the offline sections of a bus rapid transit scheme are generally promoted through the transport and works order procedures. One of the disadvantages is that the associated road traffic regulation orders required for the on-street sections of a bus rapid transit scheme would have to go through their own statutory process under the Road Traffic Regulation Act 1984. We could therefore end up with two public local hearings or inquiries for the same project.

15:15

The Edinburgh fastlink scheme is the closest we have to a bus rapid transit scheme. Significant parts of its length are off-road, and other substantial parts of it are on-road. In its evidence, SESTRAN suggested that it would be appropriate to consider the ability to roll up into the procedures in the Transport and Works (Scotland) Bill the road traffic regulation orders for the on-road sections that are remote from the off-road section but are still an integral part of the total scheme. That would avoid potentially having two different sets of legislative procedure and two public local hearings or inquiries.

The other elements of SESTRAN's comments are in line with the other evidence that the committee has heard today. For all the reasons that you have heard this afternoon, we are very supportive of the proposals for powers to access land in advance of the order being confirmed.

On an administrative issue, there are references in the bill to the "relevant authority", which is defined as the local transport and roads authority. SESTRAN would like the regional transport partnerships to be recognised. That is particularly relevant where rights are conferred on the relevant

authority to insist on or call for a public local hearing or inquiry if that authority is directly affected by a proposal that is being promoted, whoever the promoter might be.

In summary, if the committee were prepared to consider it, a more strategic approach to the consideration of the totality of a scheme might assist, particularly in the case of a bus rapid transit scheme. That might also shorten the statutory process a wee bit. My other point was of a general administrative nature about recognition of the changing status of regional transport partnerships.

**The Convener:** Thank you for those remarks. I open it up to members' questions.

**Mike Rumbles:** To go back to the old chestnut, from your perspective what do you consider to be a national project?

**Alex Macaulay:** I would expect schemes of national significance to be defined within the national planning framework and to be defined nationally.

**Mike Rumbles:** I know that but, if it were up to you, how would you want the national planning framework to differentiate between what is in and what is out?

**Alex Macaulay:** It is very difficult. Being the director of a new transport partnership, which is a regional body, I am exercising my brain on that question at present. In the regional context, the exact same issue arises as to what is of regional as opposed to local significance.

In my view, we need to relate it to the development of the top-down policy approach. National transport policy should define the types of projects that are of national transport significance. Those are schemes that give international connectivity, connectivity between the major cities and centres of population in Scotland and connectivity across the border, and schemes that support developments that the national planning framework defines as being of national strategic significance—major land-use changes and so on.

Further down the hierarchy of strategic significance are projects that might be considered to be of regional significance. Those would be linked very closely with structure plans and the evolving city region development plans. They would be related to connectivity of the region to other regions in Scotland and connectivity between major centres of population and economic activity within the region.

Such thinking leads to the development of strategic national and regional networks. We need first to define what is either nationally or regionally strategic. To a certain extent, that structure is already in place. It includes rail schemes, other than sidings-type projects. In my view, the rail

network is of national strategic significance. The same is true of the national trunk road network.

**Mike Rumbles:** In your view, is the Waverley line a national issue? Would it be in the national strategic planning framework?

**Alex Macaulay:** The Waverley line is probably one of the most difficult projects to define. Strictly speaking, it is a cul-de-sac at present—a railway siding—but it has connectivity and raises major issues associated with the capacity of the national rail network, which brings it into the national context. In the longer term, probably beyond the life of my involvement in transport planning, who is to say that the Borders railway will not provide connections to the north of England from its southern end? In that context, it becomes of national strategic significance. I find it difficult to see significant investment in the national rail network in anything other than a national context, because it is very much a national asset.

**Fergus Ewing:** Far be it from me to help a Lib Dem Minister for Transport respond to sustained questioning from a Lib Dem colleague about what national development means, but section 13(2) states that “a national development” is

“any development (within the meaning of the Town and Country Planning (Scotland) Act 1997 (c.8)) for the time being designated under section 3A(4)(b) of that Act (which relates to the content of the National Planning Framework) as a national development.”

So that is clear.

**Alex Macaulay:** That is exactly the point that I made. It is a scheme that is defined in the national planning framework as being of national significance.

**Fergus Ewing:** To be cynical, perhaps ministers do not want to be too clear because that would allow pressure groups to seek an interdict from the Court of Session, on the basis that the rules do not apply to a particular scheme.

I am concerned that rail schemes, in particular, and some road schemes take such a long time to complete. Broadly, the public want road and rail improvements throughout Scotland. If there is to be a new Forth bridge or other crossing, it may take 11 years to build. The public do not understand that. There is a gulf between us, who are privileged to be involved in discussions of this type, and the public. From your experience, can you think of ways in which we can shorten the process, particularly for major schemes—which at present often take twice the cumulative length of both world wars in the last century—while taking the public with us through consultation?

**Alex Macaulay:** I imagine that some of the measures that were resorted to in the world wars are not the type to which you would want to resort

to reduce timescales in the transport planning process.

We cannot escape the significant fact that, as well as involving major public sector capital investment and in many cases on-going revenue expenditure, major transport projects affect a large number of people. Those who are affected include not just those who are adjacent to the route of the scheme, but, in many ways, the travelling public throughout the country. When we take a step back and add on the considerations about human rights that the European Parliament has brought to bear on us, I find it difficult to think of a mechanism through which we could at a stroke knock five years off the gestation period for major transport projects.

Those projects deserve the care and attention that they get. They deserve professional analysis to justify such a high level of public sector investment and they deserve the environmental and social analysis to ensure that human rights and the environment are protected appropriately. Much of the work that is done on projects happens before they even enter the statutory process. I support whole-heartedly Kevin Murray's comment that he would not want feasibility studies to be curtailed. We must be clear that we are doing the right thing because, once such projects are completed, they have an on-going life of their own and a significant impact on how people lead their lives.

We could consider ways of simplifying the technical analysis and making it more strategic and less detailed. That is fine in concept, but when we consult the public, we might find that they want the detail. Alternatively, if we present them with the detail, they might really want the strategy. There is a catch-22 with the amount of detail that is given about a project early on. As I said, a potential way of shortening the process is to combine powers that are at present in different pieces of legislation and roll them up into one process. The Edinburgh greenways road traffic regulation orders took a year to 18 months to get through the statutory process. If such statutory processes were run in parallel with the consideration of major infrastructure projects, that would be a potential saving. However, as Kevin Murray, Susan Clark and others mentioned, much more detail would have to be provided in advance of the commencement of the statutory process. Once that process commenced, however, all the work would be done, which would allow the project to be expedited.

It is a sad fact—actually, no, it is not a sad fact, it is correct—that major projects take some time in their gestation. Rather than considering ways of waving a magic wand and magically reducing the time that it takes, we need to examine each

element of the process individually to find out whether the elements can be streamlined or parallel tracked. We also need to educate the public so that they realise that it takes a long time for such projects to come to fruition. That was not the answer that you wanted to hear, but never mind.

15:30

**Fergus Ewing:** I appreciate your answer. I appreciate also that projects need to be properly planned and thoroughly appraised, that objectors need to be clear, and that detail needs to be considered. None of those assertions is in any way contentious, but I am not convinced that it needs to take 11 years for there to be a new Forth crossing. From my experience of projects in Inverness—at Inverness harbour, for example—I am not convinced that so much money needs to be spent on worm and mollusc reports and so on, or that construction should take place for only six months a year because the dolphins might be upset by the noise.

I do not think that we have the right balance. When we drill down and look at the detail, we find that tens and hundreds of thousands of pounds are spent on ultra-technical reports about abstruse aspects of wildlife protection and so on. If the public knew how the money was being spent, they might draw some seriously negative conclusions. However, those are not things that you and I can alter in this meeting, I am afraid.

**Alex Macaulay:** You are quite right—we cannot alter those things in this meeting. In some people's eyes they are frustrations and in other people's eyes they are valid, genuine and important considerations, but they come from national and international legislation. There are European designated sites of environmental quality and so on. If you want to change the environmental approach, you need to go back and change the environmental legislation rather than necessarily to change the statutory processes for the transport sector.

**Fergus Ewing:** That may be, but on the other hand it may be that a different interpretation of the habitats directive would not involve the expense that I have seen in projects that I have studied in some detail.

In your first answer, you said that the European convention on human rights imposes certain obligations. I thought that you would be referring to the article of the European Convention for the Protection of Fundamental Human Rights and Freedoms—I think from memory that it is article 1 of protocol 1—which says that nobody shall be deprived of their possessions. That leads on to the

question of compulsory purchase proceedings in inquiries.

It seems to me that inquiries, especially on roads, are largely about disputes between owners of property that is being compulsorily purchased and the reporter, but the public think that the point of an inquiry is to determine whether a project should go ahead. In fact, the Government has usually decided to go ahead anyway. There is a conceptual conflict between what the public expect from a public inquiry, which is that a reporter will decide whether the project goes ahead, and the actual content of the inquiry, which can be largely devoted to determining private property rights and compensation. Is that the problem that you were thinking of, or was it a different matter?

**Alex Macaulay:** The human rights issue that was in my mind was that if an individual objects to a proposal, they have the right to be heard by a tribunal or an independent body and to have their objection fully aired and considered before the decision is made. Not being a lawyer, I cannot tell you exactly which article that is in. In planning inquiries and transport and works inquiries, it is difficult not to consider fully an individual's legal right to be heard in the inquiry.

In the past, there has been a lot of criticism of planning inquiries taking a long time because of examination, cross-examination and re-examination, but that framework was established to ensure that everyone who presents evidence can make a fair and honest presentation of their case. It is possible to group similar objections together—the Parliament has done that—but the fundamental right is there, and things take time.

**Fergus Ewing:** Thank you for that clarification.

**Ms Watt:** Strathclyde Partnership for Transport suggested that the project approval process could be subject to a time limit. From what you said, I take it that you do not support that suggestion. However, if you did support it, how would you go about putting a time limit in place?

**Alex Macaulay:** If you mean that the public approval process from beginning to end should be subject to a time limit, I do not know whether that is possible, because it depends very much on the complexity and scale of the project that we are dealing with, the number of objections and the depth and validity of those objections. If, on the other hand, the suggestion is that we could place a limit on the time that the reporters take to produce their final recommendation to the minister, that is perfectly valid and reasonable. That could be achieved by pre-inquiry discussion and consideration by the reporters unit and the promoter of the scale of evidence and of objections that had already been lodged.

We have done that in the past. I hate to mention it, but we did it with the successful public hearing on road user charging in Edinburgh. We gave the reporters a time limit to produce their report and they agreed to that time limit. That was important to the project, but it was equally important that they should be prepared to deliver on that timescale. Such a timescale can be developed only through discussion and negotiation between the reporters and the promoters in the context of the scale of evidence that has been submitted for the hearing, but it can be done, and that can get rid of the fear that the inquiry will drag on and on while the reporter gives the matter endless consideration. Reporters have to focus their minds and produce a cogent report to a given timescale, just as anyone else has to do.

**Ms Watt:** I suppose that the time limit would have to be correlated to the amount of evidence gathered, but is there not a stage before that, when a reporter is appointed? We often hear about delays in public inquiries because a reporter has not been appointed for some reason.

**Alex Macaulay:** That is a straightforward resource issue. The reporters unit is of a finite size, just as the Parliament is, so it has a certain capacity for dealing with inquiries, although that capacity is variable, as the unit can call in temporary reporters to enhance the resources available. The way round that problem is to get a bid in early—to get the order for a reporter in well in advance—and to go and see the unit and speak to the head of the unit to identify the programme for the project and to agree that the unit will deliver the appropriate level of resource to accommodate that.

That is perfectly feasible. It is exactly what we did with the congestion charging inquiry. We went to the reporters unit well in advance and got a commitment that three reporters would be available for the period of months required for that public inquiry. It can be done, but we need to consider all the individual bits of the process and chip away at them to ensure that there is no dead time. Years of dead time can accumulate over the gestation of a scheme. I do not think that there is a panacea for reducing the amount of time involved. It has to be done by looking at the individual elements of the process.

**The Convener:** Thank you for your evidence, which has been useful. I am sure that, in due course, we will put to the minister some of the suggestions that you have made for relatively minor amendments to the bill.

*Meeting closed at 15:39.*



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