LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 26 September 2006

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE
23rd 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:

Alison Bourne
Karen Gribben (Network Rail)
Ron McAulay (Network Rail)
James McCulloch (Scottish Executive Development Department)
Mrs Odell Milne
Joanne Teal (McGrigors)
Kristina Woolnough
Nigel Wunsch (Network Rail)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 6

Scottish Parliament

Local Government and Transport Committee

Tuesday 26 September 2006

[THE CONVENER *opened the meeting at 14:04*]

Item in Private

The Convener (Bristow Muldoon): I bring today's meeting of the Local Government and Transport Committee to order. We have one quick item to consider before we move on to today's main item, which is evidence taking.

Item 4 is consideration of whether to request an extension to the contract of the committee's adviser on the freight transport inquiry. Does the committee agree to discuss that in private?

Members *indicated agreement*.

Transport and Works (Scotland) Bill: Stage 1

14:05

The Convener: Item 2 is further evidence at stage 1 on the Transport and Works (Scotland) Bill. The witnesses on the first panel have experience of the current system of consideration of public transport projects from their perspective as objectors. I welcome Odell Milne, Alison Bourne and Kristina Woolnough.

I look forward to hearing your evidence today. Have you decided among yourselves whether any of you will make introductory remarks or do you all want to do that?

Kristina Woolnough: I represent Blackhall community association, which circulates a newsletter three times a year to more than 3,000 households, so it has a broad opinion base.

Mrs Odell Milne: I am here as an individual and in a personal capacity. I am not representing Brodies LLP solicitors or any of its clients.

Alison Bourne: I am quite happy to say nothing.

The Convener: As you do not want to make any broader introductory remarks, I open up the meeting for questions from members of the committee.

Michael McMahon (Hamilton North and Bellshill) (Lab): In your experience of discussing bills, did members of the Scottish Parliament bring anything helpful to the discussions that might not be there if objectors deal only with a reporter? Please be honest.

Kristina Woolnough: No—nothing.

Mrs Milne: No.

Alison Bourne: No.

Michael McMahon: Did MSPs bring an interest in the subject, which—

Kristina Woolnough: No—they had no interest whatever in the subject.

Alison Bourne: Quite the contrary, really.

Kristina Woolnough: The conversations among women MSPs in the toilets were about how boring the process was and what a waste of everybody's lives it was. They were not interested in the process or the procedure.

Alison Bourne: I have to say that, from the outset, most of the objectors pinned their hopes on the committee. The objectors had hoped that MSPs, as elected representatives, would be genuinely interested in the problems that were

associated with the Edinburgh Tram (Line One) Bill, but it quickly became apparent that, because of the number of objections and the time pressures, the committee was in a hurry to get through the bill as quickly as possible.

Kristina Woolnough: Margaret Smith MSP made an important point to us.

Alison Bourne: She is my MSP.

Kristina Woolnough: Margaret Smith said that, because none of the MSPs who were on the committee represent the area that would be affected, they had no democratic interest, as it were, in responding to voters.

Michael McMahon: Two questions arise from that. First, do you think that that might have been a good thing because the MSPs could consider the matter dispassionately through having no vested interest? Secondly, if in the future MSPs are not involved in the deliberations on objections and objections are instead handled by a reporter, will that be an advantage? Would you have more confidence in talking to someone who has technical expertise?

Kristina Woolnough: The MSPs should have taken on board all the evidence. There was a lot of evidence and, if I was an MSP, I would have been anxious about making a decision when I did not know the beginning, the middle and the end of all the arguments. I think that you are suggesting that a reporter will have that knowledge, unlike MSPs. However, objectors will not have a representative who hears all the evidence on their behalf and then makes a representation, so there is an issue of accountability and information.

Your first question was about MSPs taking a dispassionate view. To be fair, it was hard going for everyone because the subject was technical and there was a lot of information. Perhaps the experts enjoyed talking endlessly about trams, noise, sound and vibration, but I do not think that anybody else did. As Alison Bourne said, we had hoped that the MSPs would listen to the people and be robust in getting answers to our questions, but that did not happen. Our questions are still unanswered.

The key point is that we feel that the process was party political. The delivery of the tram project in Edinburgh had the support of all the parties at council level, which was pretty much reflected in front of the committee. We felt that it was a done deal because it was a politically motivated project that already had party-political endorsement.

Michael McMahon: I take on board what you say: you think that the involvement of MSPs did not bring anything beneficial to the process. That is why we are trying to change it, so there is no real conflict. I am just trying to find out your perceptions of the problems.

If the process were changed to involve a reporter, would you have more confidence in it? Do you think that you would have greater opportunity to argue your case if you were dealing with an official?

Kristina Woolnough: It is difficult to say. Thinking back to my involvement with the congestion-charging inquiry in Edinburgh, I remember that the council appointed three reporters and provided the remits for them. A reporter is given a brief only to examine detail—what use is it if they are not allowed to examine the principle of a scheme? There are also problems with the reporters who are appointed by the Scottish Executive. With regard to the tram proposal in Edinburgh, we were perfectly aware—because Edinburgh is quite a small place—that the high-up people in the Scottish Executive's Enterprise, Transport and Lifelong Learning Department were desperate to deliver the tram. We did not feel that there was impartiality at any level. There was a desire to have the scheme in principle, but there were no exit points at any time.

Alison Bourne: I covered that point in my second submission to the committee. Many objectors felt that the tramline 1 project was flawed from the outset and that there were fundamental problems with it. Most objectors felt that the damage had been done before the bill was lodged with Parliament and that it was already beyond the point at which the fundamental flaws could be addressed. I would certainly like there to be much earlier independent scrutiny, which need not be expensive or time consuming.

Tina Woolnough has explained previously that, in America, there are expert panels that scrutinise public projects for their public good—almost on a pro bono basis—which I think is a good idea. A panel of experts from, say, the Institution of Civil Engineers Scotland could scrutinise a scheme from its outset to ensure that the sifting process is done in accordance with Scottish transport appraisal guidance—which was not the case with the tramline 1 project—and that the funding is in place to deliver the entirety of the scheme. If that does not happen, you will end up with the situation that the tramline 1 project is in: basically, the project has disintegrated into one small section of line for which there are no supporting data. The big issues that caused the difficulties would have been identified by independent experts well before the objectors ever got their hands on that sort of information, which would have meant that there would have been a chance to fix those problems at an early stage.

Kristina Woolnough: The peer review mechanism that operates in the east of the United

States of America involves professionals giving their time as volunteers—they see it as a way of giving something back, as it were. Because they are not being paid, there are no issues of client loyalty and so on. I would have liked paragraph 50 of the policy memorandum to have included an obligation on the promoter to produce a statement about the contentious issues. Right up front, there should be recognition by the promoter of the problems. We experienced a welter of spin and, as I said, the main issue that we had with the project—which was, basically, the need for it to serve the front door of the Western general hospital—and the issues relating to how the project would fit into the space that the promoter was planning to put it in are still unresolved. However, if there were right from the outset a list of key contentious issues, which MSPs could also see, the promoter would have to admit that there were problems and it would be possible to show whether the points had been answered by the promoter. The promoter has never admitted that there are any problems with the tramline 1 proposal.

Alison Bourne: I can think of nothing that the private bill process did to answer any of my concerns. I have more questions today than I had when I went to the first public consultation meeting.

Michael McMahon: I do not think that we are at odds with the MSPs who served on the committees that dealt with the Edinburgh tram projects, which is why we are implementing this change.

Alison Bourne: It is not a personal thing.

Michael McMahon: I totally understand that.

Alison Bourne: Given that we were talking about local MSPs serving on committees, I should say that the only time Margaret Smith, my local MSP, was able to officially put her views to the committee was during the final stage debate. That is ridiculous. She has told me that the issue of access to the Western general hospital is far and away the number 1 concern in her constituency. I would hope that a reporter would be in a position to listen to local MSPs so that the public would have the opportunity to raise concerns by that route.

14:15

Michael McMahon: That is the important thing. People identified the fact that there were problems with the private bill system, so it was suggested that a new approach is required. First, we want to know whether you believe that the new system will be an improvement on the system that you experienced. Secondly, in what ways will you feel more confident about consultation and people's ability to object under the new system, compared with what you experienced?

Alison Bourne: Unless there is an independent and on-going peer review from the start, there will be the same problems as with tramline 1. Major issues will not be addressed early so it will, by the time a bill is introduced, be too late to make the necessary decisions. Unless something is done to address that, the problems will be the same. If it was assumed that there were no big fundamental flaws with a proposal, it would reach the parliamentary bill stage and an inquiry would be undertaken by a reporter—I would have a lot more confidence in a reporter's understanding the technical issues.

I heard Jackie Baillie give evidence to the committee on 5 September and was surprised to hear her say that the tram route alternatives for serving the Western general hospital in Edinburgh were quickly discounted due to gradient. However, not one of the alternative alignments for serving the Western general had a gradient issue. There was a gradient consideration in respect of two of the alignments but, because the promoter admitted that it did not actually consider any alignment other than its preferred one in any great detail, the promoter could not say whether or not gradient would have been a showstopper.

I was also disappointed to hear Jackie Baillie say that the decision on the Western general was taken at an initial stage, which implied to me that it had been decided at the preliminary stage of the Edinburgh Tram (Line One) Bill that changing the alignment to serve the hospital was not a goer. We had to submit a mountain of evidence at the consideration stage, which I suppose was purely to show that the Edinburgh Tram (Line One) Bill Committee had somehow ticked the right box and listened to the public's concerns. It was already too late for that, however.

Kristina Woolnough: The key argument that we can make is that, whatever process is devised for MSPs and for reporters, the public must be meaningfully involved. That requires that whatever input they make will have a clear outcome. People might not have their way, but there must be acknowledgement of their input. In the tramline 1 process, there was not.

The policy memorandum for the Transport and Works (Scotland) Bill says that thepromoters' proposals should be

"fully detailed and feasible"

and that

"there should be no scope for any substantive amendment".

There is therefore not much point in public participation, which runs contrary to the public's continuing to be involved. If there are not going to

be any changes, there is no point in people being involved. As Alison Bourne said, at the pre-inquiry stage we would need a monitor—someone watching over the so-called consultations and meetings between the promoter and potential objectors. Someone is needed to check independently that that is done properly. Promoters, whoever they are, will say that they have done everything well and successfully. "Look," a promoter will say, "we've had all these meetings and sent out this questionnaire," but that does not mean that things were done well and it does not mean that there was a measurable outcome, if I may use that favourite phrase. There needs to be some sort of monitoring before the inquiry stage, and it must be really robust. Every point that a member of the public raises has to receive a proper answer.

Alison Bourne: That does not just go for members of the public. In the case of the Edinburgh Tram (Line One) Bill, TIE Ltd submitted a list of bodies that it had apparently consulted, including Lothian Buses plc and NHS Lothian. Those bodies later testified to the bill committee that they had not been consulted at all, and that they had been told by TIE where the tram would run. They were not asked for an opinion. TIE was able to tick the box and say that it had consulted such organisations despite their saying that they had not been consulted, but had simply been told what was happening. That becomes important when we consider who the organisations were. Lothian Buses was not asked for a reaction to the tram scheme at the consultation stage, and was not asked what changes to bus services it would be prepared to make so that the tram could be a success. However, in its Scottish transport appraisal guidance document, TIE had made lots of assumptions about what bus services would change. TIE's consultants were the people who said, "We anticipate that Lothian Buses will remove 47 per cent of buses from Leith Walk," but Lothian Buses itself had not said that it would.

Michael McMahon: So, from your point of view, the important thing is that local communities should feel confident that they are being listened to.

Alison Bourne: Yes, but it should be the whole community that is listened to—not just people like us, but the big people who could severely impact on the project. If Lothian Buses does not withdraw its services, where will the tram get its passengers from? That seems to be a fundamental question. Lothian Buses should have been allowed to comment on it right at the start.

Michael McMahon: I am not sure that we should go back over evidence that has been taken previously.

Alison Bourne: No.

Michael McMahon: You have experience of the old system. Do you have more confidence in the proposed new system? What caveats should we know about in terms of consultation? Will you tell us your concerns so that we can ensure that they are built into the new bill?

Alison Bourne: My first concern is that there should be independent scrutiny from a very early stage, so that everything is carried out properly and thoroughly, following Scottish transport appraisal guidance. An independent person should be able to say, "Let me see your sifting tables. Let me see the criteria. Did you use the five national criteria? Did you weight them? Why did you weight them? Why didn't you use those criteria?" That person should be able to say to the promoter, "No. I'm not happy that this has been done in accordance with the guidance. You need to go back and do it again."

As an ordinary member of the public I would be concerned about the timescale in giving evidence to a reporter. One of the primary objectives of the bill is to speed up the process, but our experience was that the volume of work in putting evidence together was a real problem. It was a particular problem for me, because I was covering the issues to do with the Western general hospital. I could not possibly have put that evidence together within a few days if it had been required for a reporter.

After a thorough and detailed assessment of the bill, a reporter may have reservations about it, but I am concerned that MSPs would be able to override the reporter. Mr Ewing has spoken previously about dualling the A9. I can absolutely understand why MSPs want projects to be delivered, but I would have serious concerns if that were done at the expense of discounting what a technically qualified expert reporter had said.

Kristina Woolnough: The hurry is a matter for concern. You want fast decisions, but speed is not necessarily a good thing. The decisions have to be right; it does not matter how long they take as long as they are right. If the decisions are right, the public will feel confident in the system. Hurry for the sake of hurry seems to be ridiculous.

My area of expertise, as a member of the public, was the environmental impact assessment. I would have concerns about a lack of peer reviews of that. European legislation on EIAs is quite robust now, but my concern is that there will be no independent scrutiny and no reviews that might say, "Actually, this isn't good enough." The EIA for tramline 1 missed out a human amenity, but it was a requirement that that be included. The EIA had only to be adequate. Is that what you will be looking for in the bill? Is adequate good enough?

Mrs Milne: The bill as drafted will not give frontagers—which is what we all were—the right to be heard in an inquiry. I understand that that is the position in England, as well. However, frontagers generally are heard, and it should be enshrined in legislation that they have a right to be heard. Often, frontagers are worse affected than people from whom land is to be taken. If you are taking land from a big estate, the person might not be very badly affected and will get compensation. By everybody's admission, the compensation for frontagers is pretty poor, yet they are the people who are genuinely badly affected by such projects.

A reporter would be easier in some ways. Preparing a week's evidence, for example, means that one does not have to keep on going back over the evidence. One of the problems with the previous system was that we kept having to review the evidence, which we had not looked at for six months. One might speak to the committee then go away for another four weeks; by the time we came back we had forgotten it all. Also, people have work commitments and cannot attend all the hearings. If it all took place in a week and one was committed enough, one could take a week's holiday, go to the reporter and make one's points. There are attractions in the idea of there being a reporter, provided that people are given adequate time to prepare. It should be recognised that, for members of the public, that is what they are going to be doing on their weekends and evenings. Given the volume of information we are given, that is quite important. I agree that there is room for some kind of peer review of the evidence before it goes to the reporter. Both my co-objectors have made valid points about provisions that appeared to be unsatisfactory.

Kristina Woolnough: I was anxious about the definition of "nationally significant" because I feel strongly that there should be transparent and clear criteria for that. It should be possible early in a project to say why it will be nationally significant and to produce the evidence for that—ditto for the environmental impact. Many transport projects have severe environmental impacts. A proper loss-gain assessment should be set out in black and white so that we can say, "We're paying a price for that but it's worth it," or, "That's too great a price environmentally." However, if one is promoting a transport scheme that is supported by Government policy, there can be an essential contradiction in that environmental damage may also run contrary to Government policy. We need to consider projects head on.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): From your evidence, it is clear that you are not happy with the private bills system. I find it fascinating that Alison Bourne says in her submission that her main concern regarding the private bills process is that it does not ensure accountability. I find that curious because, according to other evidence we have received and in my reading of the bill, the bill would take away accountability. The question is whether and to what extent other factors would outweigh that. I think that there would be such other factors, but your main concern is that the current system does not ensure accountability. Surely the proposed system would ensure less accountability because, if a reporter conducts an inquiry, there will be nothing to stop the minister—he or she is all-powerful in such cases—ignoring the reporter.

Alison Bourne: The minister will become accountable.

Mike Rumbles: To whom?

Alison Bourne: To the public. If a minister went against the findings of a reporter, with all the reporter's technical expertise and knowledge, that minister would become accountable to the public for the eventual outcome of the scheme. Odell Milne made the point that we were surprised that the final stage report went into so little detail. It did not deal with people's objections or with the major issues that we had. A reporter would do that.

Mike Rumbles: I bring you back to the word "accountability". I do not want to go over the same ground as Michael McMahon, but I am trying to focus just on accountability.

Alison Bourne: A reporter will make the whole process more transparent. The nature of the process is that the reporter will ask questions and we will answer them. That is not like a private bill committee meeting, in which one depends on a particular question to be asked in order that one can submit one's evidence. One will be able to submit whatever evidence one wants to a reporter and he will base his recommendations on all the evidence. If a minister overrules what the reporter has said after consideration of all the evidence, the minister must assume responsibility for anything that happens after that.

Kristina Woolnough: I am slightly with Mike Rumbles on the accountability issue. It depends on the reporter. The difficulty is that there is no guarantee that anybody will get the decision they want. In terms of accountability, it is about who has access to the information, who has seen the process through from beginning to end, and who has observed, listened and taken the information on board.

Our experience seems to have been different from that of the convener of the Edinburgh Tram (Line One) Bill Committee. The information was put in front of the MSPs, but we could do nothing about what they did with it or about what further questions they might ask. However, we had the strong sense that because of the wealth of

information from objectors—there were piles of it—the clerks did most of the work. We got the feeling that the clerks rather than the MSPs had all the information in front of them. What is the difference between clerks having all the information and a reporter having it? Perhaps it would be a good idea to have more than one reporter. Again, it would depend on the remit that MSPs give a reporter. If a committee gave a clear brief to the reporter, it would be accountable for the subsequent report and for what was done with it.

14:30

Mike Rumbles: The point that I am trying to focus on is strictly about accountability, because that is the issue that you raised. Admittedly, the MSPs on private bill committees are not the MSPs for the localities that are affected by the bills—to ensure that no bias is shown, local MSPs are not allowed to be members of such committees—but it is the case that there are public representatives on private bill committees and the bill comes to us all in Parliament. Margaret Smith was able to get up in the chamber and challenge the bill. That is what accountability is, as far as I can see. However, under the new procedure that the bill will bring in, that accountability will be removed.

Kristina Woolnough: I agree. There is no doubt you would lose control of the process, to a degree—at any rate, you would lose control of the flow of information. However, the advantage is that you would gain about 260 MSP hours a year. What is this bill for? It seems to me that it is about reducing the workload for MSPs, but I am not sure that the outcome for the public would be any different. We have not tried any other way.

Accountability is an issue for MSPs. As a member of the public, I must say that we rarely see a politician being held accountable for something or admitting that they are accountable for something. I think that you are describing a wonderful situation in which MSPs are truly accountable for their decisions and put their hands up to say, "Yes, it was me." That is a nice picture, but it is not the reality.

Alison Bourne: Relevant examples from the tramline 1 process are the Western general hospital and the funding for the project. The trouble with the private bill process is that witnesses rely on the committee asking them questions to get relevant points out. I submitted a 64-page witness statement, with 90 supporting documents, to the Edinburgh Tram (Line One) Bill Committee. I sat through hours of examination and cross-examination of the promoter and other objector groups. However, when it was my turn to be questioned, the committee members did not ask me one question on the Western general aspect. I realised then that they were not going to ask me questions because they did not want to give me a platform that would make them responsible for the recommendation that they were going to make.

It was the same with the funding. The objectors knew in 2003 about the funding shortfall for tramline 1. We e-mailed every councillor and said, "Do you realise that this tram scheme is going to be more than £200 million short?" They all voted for it anyway. We could see from TIE's background papers, as could the Scottish Executive, that there would be that shortfall. The Executive knew, so why did the public not know? To this day, having gone through all the private bill process, with all those MSPs scrutinising the bill, we are still left with a funding shortfall that nobody knows how to meet.

At what point does somebody—I hope that it will be a reporter—take a grip of a project and say, "We have a major problem here that may affect whether this project is delivered or not. We really need to get some answers to this question"? That is not happening, which is why people such as me become so exasperated at the number of schemes that we see being promised. Issues such as funding are not addressed early on and are allowed to slide, and we end up with—what?

Kristina Woolnough: Is it possible to have a hybrid system? We are talking about accountability for information and decisions. Does it matter to MSPs whether a clerk or a reporter sifts the evidence and information and pulls out the key points? I am not sure that it should matter. However, what is done with the sifted information is important. Is it possible to have a system in which a panel of MSPs looks at what the reporter determines are the crucial issues and then takes evidence from whomsoever it sees fit? Is it possible to have a two-tier approach before going to a full parliamentary debate?

Mike Rumbles: What we are taking evidence on is a bill produced by the Scottish Executive to change the system that you experienced. I am trying to focus on accountability, and I will ask a particular question to tease out the issue some more.

The bill proposes a system in which a report goes to the minister, who can either accept or reject a plan. Let us say that they reject it. In that case, they are accountable to Parliament, and through that to the people, only if that plan is of national importance. If the plan is not of national importance, they do not have to go anywhere near Parliament. Even with an issue of national importance, they have only to lodge a statutory instrument that cannot be amended. As your public representatives, we can say only yea or nay—we cannot change that instrument.

That is the proposal and what we are taking evidence on. I do not want any misunderstanding. Are you saying that your main concern is that the current system does not ensure accountability? To me, it seems that the bill will make the system less accountable.

Kristina Woolnough: We are not here to support the bill. As I understand it, we were invited to make contributions. I am not expert enough to say that the bill is watertight, although clearly it is not. In a way, with what you are describing, the system becomes more of a fudge and it is less clear who is accountable. At least we know that we sat in front of a committee of MSPs and tried to put our evidence to them. What they and their clerks did with it is a matter for them, but we know who they were. If reporters or another level of civil service were introduced, what would go on behind the scenes?

Mrs Milne: I do not think that accountability is a major problem for objectors; it is more your problem. The objectors need to have confidence in the forum in which they are heard. If the minister makes a decision that is completely at variance with what is placed before him, he will have to be answerable. Ministers will have to put a plan of national importance before Parliament, and you will be able to make a decision on that. There is nothing to say that you cannot amend the bill so that the minister has to put a plan before you if he makes a decision that is at variance with any aspect of the recommendation.

From the objectors' point of view, the important point is that they should feel that they have been heard and that their views have been taken into account in a report fairly and squarely in a quasi-judicial situation. That is what the whole system is supposed to be about. The bill committees did not perhaps act quasi-judicially. We have a lot of confidence in other forums that are not accountable to the Parliament. We go to courts all the time. We need to have confidence in the forum that we speak to.

Alison Bourne: We are pinning our hopes on the fact that a reporter would not have a political agenda to follow or electoral promises to deliver. We imagine a reporter as a purely technical expert who examines evidence with proper independence and makes recommendations based on it.

Mike Rumbles: But the reporter reports to the minister.

Alison Bourne: Yes, but the report comes to ministers and MSPs.

Kristina Woolnough: I do not have that confidence. The idea of independent peer reviews at various stages was mentioned, and that is because people do not have confidence. Everybody says that everybody is political.

Paul Martin (Glasgow Springburn) (Lab): One issue that you have raised repeatedly follows on from the last point and is a concern about political interests. Could you be more specific? It is quite a—

Alison Bourne: You are opening up a floodgate there.

Paul Martin: It is quite a serious allegation to say that—

Alison Bourne: We felt right from the start—

The Convener: Could you let Mr Martin finish his question?

Paul Martin: It is a serious allegation to make that the Edinburgh Tram (Line One) Bill Committee's interrogation and conclusions all had some political background or reasons. I do not know whether you would make the same allegation about this committee's questioning today.

Alison Bourne: My comment was aimed at the whole process from the consultation period onwards. From an early stage, we were aware that there was massive political will behind the tram scheme. When we spoke to the council about the need for the scheme to serve the Western general hospital, we had discovered that TIE had failed to identify an eminently viable route to serve the hospital. We took that proposal to the full council, but the transport convener said that the bill had to be lodged on Christmas eve and that the council could not afford a delay. Why not? Serving the hospital was an important issue, but we were told that the council could not afford a delay. That was because the scheme was politically driven—the council wanted to deliver the scheme before the elections in May, which is why the financial proposals were voted through without any questions. The issue was not just the private bill committee; it was the whole process. The scheme had overwhelming support from all political parties—it was politically driven. I pointed out fundamental flaws with the scheme but, because everybody supported it, nobody addressed them and the flaws still exist.

Kristina Woolnough: There is a misunderstanding. We are not saying that each member of the committee was acting politically; we are saying that there was massive political will to deliver the project. In a way, that will to deliver the scheme appeared to weaken the committee's role slightly—I would not say that it was redundant. The effects of that political will were evident in the committee. The members were interested in us as human beings—they were good with us and helped us through a difficult process—but we felt a flatness in that, whatever they did or we said, it did not make any difference.

Alison Bourne: I will refer again to Jackie Baillie's comments to this committee on the decision on whether the scheme should serve the Western general. She said that the alternative routes were discounted because of the gradients. However, she went on to state:

"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."—[*Official Report*, *Local Government and Transport Committee*, 5 September 2006; c 3913.]

Because the committee had a timetable, the issue was not about getting the project right.

Paul Martin: Do you accept that similar timetables would be attached to a reporter's inquiry? The reporter would not allow the process to go on for the next three years or as long as it took; they would have a timetable, too. Do you also accept that communities want a timetable, too?

Alison Bourne: Yes, but if there was an on-going peer review from the start, big issues would be resolved way before the reporter process started. A reporter would have been able to consider the proposals to serve the Western general once the public, through the consultation, expressed a desire for the hospital to be served—which is what happened. A reporter could have considered that.

Paul Martin: Can I just finish the point about political input? You have no proof whatever—

Alison Bourne: That is not what I am suggesting.

Paul Martin: You have no written proof, such as a press release by a member of the private bill committee, that any member was pressurised by a business manager. You say that it seemed as though there was political persuasion or pressure, but you have no proof of that.

Alison Bourne: I am suggesting not that the committee members were reacting to direct political pressure but that the whole project was politically motivated because of the will to deliver the project among all political parties. That is what I meant.

Kristina Woolnough: One key point is that the process became more important than the project. The hurry with the process and the timescale meant that the committee could not divert its attention. As I said in my submission, there were no exit points, but we were not told that. The member suggested that MSPs act independently when they are on private bill committees. I acknowledge that that is the intention but, to members of the public, politicians are party political—end of story. They may not open their mouths and follow a party line, but they are party politicians. On the Edinburgh Tram (Line One) Bill Committee, there were two Labour MSPs, one Scottish National Party MSP and one Conservative MSP. There was a spread, but the members represented their parties, all of which had voted early on in support of the tram scheme.

Paul Martin: I turn to the issue of the independence of reporters. You have raised repeatedly the technical expertise of reporters. Will you elaborate on that, because my understanding is different?

14:45

Kristina Woolnough: I do not know enough about reporters, but I know enough about planning reporters, who sometimes have to deal with transport projects. The reporters who dealt with the congestion charging scheme were an architect and representatives of two other professions. Reporters come from diverse backgrounds and there is no guarantee that they will be technical experts. If the process is more like a planning inquiry and expert witnesses give evidence for and against the proposal, the arguments are heard.

Paul Martin: Should it be the reporter's role to interrogate and to gather evidence from witnesses on the technical expertise that is available? No disrespect to reporters, but very few of them will be environmental experts, transport experts and experts in all the areas to which the process relates. Surely the reporter's role is to gather evidence, which is the same as a committee's role.

Kristina Woolnough: Yes, but we think that there should be a peer review early in the process, before a bill is drafted. We need another system that does not involve reporters or MSPs and that makes provision for robust peer reviews. We should identify problems early and get them sorted out. If we do that, we will end up with good projects. Early on, before a lot of public money has been wasted on getting nowhere, people should have an opportunity to say, "This is a good thing. Let's go for it," or, "This is not a good thing." I am talking about the general good rather than individual objections. As I have already said, we need to demonstrate public benefit. We need criteria for proving national interest and significance. Those criteria are missing.

Paul Martin: Some years ago, a road was built in the centre of my constituency of Springburn. An inquiry was held, but I will never agree with its outcome, regardless of how many technical experts were involved and how independent the reporter was—even if the reporter was

independently appointed by the local community. Do you expect ever to get to the stage of being able to say that you are very happy with the process, although it did not have the outcome that you wanted?

Mrs Milne: We would have liked to see a report that responded to the evidence bit by bit, weighed it up and gave an answer. If the report had said, "We have considered all the pieces of evidence and reached the following conclusions," I would have accepted that there had been a quasi-judicial review of the Edinburgh Tram (Line One) Bill. However, the report was very short and provided no answers to many of the questions. I am not saying for one minute that the committee did not discuss and consider all the evidence—I am sure that it did before making its decision. However, not only was justice not done, it was not seen to be done. In the report that we received, we did not see the basis on which the committee made its decision.

Alison Bourne: The situation is not helped by the fact that the private bill procedure requires objectors to show that the bill will have a direct adverse effect on them. People have to be directly next to the scheme in order to lodge an objection, so they are automatically labelled as nimbys. Most of the residents along the Roseburn corridor have lived in their homes for donkey's years. There have been rumours about a tram scheme throughout that time. None of us objected to a tram scheme in principle; if we did, we would not have bought our houses or we would have moved. The point was that we could not see what the particular tram scheme was for, what benefit it would bring to the community and what issues it would address.

Kristina Woolnough: I am not directly affected by the tram scheme. I gave evidence as a community representative. It would not have mattered if there had been a public inquiry or some other process. As Odell Milne said, the point is that the process should be seen to be doing what is necessary, that people should be seen to be being heard and that answers should be found. That is what the process should deliver. People may not like the outcome, but they should at least feel that it was worth their taking part. We discussed why we are here today and why we are reliving the Edinburgh Tram (Line One) Bill experience. We are here because we were dissatisfied with the process. Any process that leaves us with unanswered questions is a bad process.

The committee is concentrating on whether reporters or MSPs should have power in the process, and we are caught in the crossfire. The issue for the public is whether they were properly heard and whether proper answers were given to their questions. If not, the process was faulty. We want any bill to ensure that people are given proper, respectful answers to the points that they make. We are here because we are still angry about the process, because it left us in no better position after three years than we were in at the beginning. Nothing changed and our arguments did not change.

David McLetchie (Edinburgh Pentlands) (Con): I declare an interest as a resident of Blackhall and a recipient of one of Tina Woolnough's many newsletters, which are very good, I have to say. I have listened to the evidence and it seems to me that part of the problem is that you did not feel that there was proper public consultation about the big prior question of whether Edinburgh should have a tram system at all.

Kristina Woolnough: And where it should go.

David McLetchie: Perhaps that is the second question. I want to try to separate out the two elements. There was obviously the big transport policy question of whether Edinburgh should have a tram system at all—regardless of whether it would be line 1, line 2, composite versions thereof, or line 3, which never got off the ground. You feel that that question was answered by the politicians beforehand, but the same thing might happen if we have an inquiry process as opposed to a private bill process. People thought that the private bill procedure was meant to debate the big question as well as all the subsidiary questions of where a line might go, what the appropriate compensation packages might be and what to do about noise and vibration. If I understand your evidence, you are saying that in order to improve the level of public satisfaction, we have to be sure that there are processes to deal with the big questions before we get to the subsidiary ones.

Kristina Woolnough: I agree. Any big transport project should be in local plans and structure plans, which should be flagged up to the public so that they wake up. It takes the public about five years to wake up to anything unless they are directly affected, because so much is going on all the time and people lead busy lives. Plans for big transport projects should be flagged up in key statutory ways before they come out of the sky and become, for example, a tram project with an alignment that is already chosen.

There should be room for manoeuvre. The grant allocation was £375 million for the tram projects. Most people, including the tram promoter, would agree that there are cheaper ways of providing mass transit operations than there were when the tram bill was lodged and the scheme was devised. There is no flexibility to consider better options later on. Sorry, I am digressing again.

David McLetchie: In effect, such public projects are funded by the taxpayer so, in a sense, the issue of funding is subordinate at an inquiry, because if there is the political will for a project, somebody will always write the cheque to bring it into being. How much the cost has risen is a legitimate concern, but it cannot be the basis of an objection to the scheme if there is someone standing in the background who can make a political decision to give another £200 million to the Edinburgh trams or the airport rail link, as opposed to spending another £200 million on a new hospital or a few schools.

Alison Bourne: Yes, but so much seems to be done without proper consultation with the public. That relates to my point about political involvement. The decision was made that Edinburgh would have a tram scheme, but the public were not allowed to choose which line to have or say where they wanted the line to go.

There is no shadow of a doubt in my mind that the public would have chosen line 3. The new Royal infirmary is the key access problem in the city and there would be a real social benefit in running the tramline past the hospital. Line 3 would have gone along the city's biggest bus corridor and past the university. It would have served the new biomedical park, the Craigmillar regeneration area and Fort Kinnaird and there would have been a park and ride at the end of the line. People could see the sense of that, but they were not asked which line they wanted.

The political decision was taken to promote the tramlines. The public looked at the scheme and asked what it was going to fix. That is why the level of support for it has plummeted. People like trams. None of us was born a tram objector—we like trams, too. The issue is with the tram scheme, what it is going to do and what the public are going to get for their money. If the line had gone to the Royal infirmary, Craigmillar and Cameron Toll, people would have been able to see the benefits of it.

Kristina Woolnough: What David McLetchie said is absolutely right. The big in-principle decision to have trams had already been taken, without any public involvement. Unfortunately, the decision was taken by all the political parties; we had no politicians to go to to see us through the process or speak for us. That was another problem and I do not know whether a reporter system would make any difference to it. The bill proposes lots of discussions before an inquiry and before an order is laid. However, someone needs to monitor that to check that it is done and someone needs to ask the big questions, such as whether the proposed project is the right thing. That brings us back to the point that the first question should be what the public benefit is. The benefit should not be political; it should be a demonstrable public benefit. That should be the number 1 criterion for any project.

Alison Bourne: Many of us feel quite aggrieved. From the beginning, we asked questions such as, "Why is the tram not servicing the hospital?" and, "Why is it not addressing any key areas where there is an access problem?" We did not back down but kept asking those questions and, because we never got the answers, did so ever more loudly. However, because we did that, we were labelled enemies of the tram scheme. We do not object to trams; we wanted to know what that tram project would do for the city with our money. For that, we were labelled subversives. It is ridiculous.

It is impossible to have an open consultation to ascertain exactly what the public want because, if somebody disagrees with what the promoter or the local councillor says, they are called an enemy of the scheme. That is not a good climate in which to make important decisions about transport projects. Ordinary people know where they need to go.

David McLetchie: Was there a good enough understanding of the interconnecting nature of the various parties in the project, such as the council and TIE, which is in effect a subsidiary of the council? You also mentioned Lothian Buses, which is wholly owned by the council. There are at least three players that, on the face of it, look as though they are all independent.

Alison Bourne: No.

Kristina Woolnough: We had the sense that it was a high-stakes game. We did not want to play any games; we just wanted questions to be answered. The people representing the other parties—TIE, the council and Lothian Buses—were paid to do so, but we were there as volunteers to get an answer. We are sitting here because we still have no answers.

The neighbours opposite me knew that their house was up against a former railway corridor. Had the tram gone to the Western general hospital, they would have understood the need for the scheme because they would have seen the public benefit. They are not nimbys—absolutely not—but it was impossible to get that point across and to get it addressed because the promoter wanted to pigeonhole us.

Alison Bourne: I also think that there is a certain amount of tension between the parties.

Mrs Milne: Sometimes, we found that if TIE wanted to do something, it could do it, but if it did not want to do something, it had to ask the council. The promoter was supposed to be the council, but all the way through it was "TIE this" and "TIE that".

There was definitely confusion about those two entities.

Alison Bourne: From examining all the evidence on the Western general, I feel that there were people in the council who wanted the Western general to be served. I have with me the document on the sifting procedure for the hospital. It shows that somebody in the council told TIE that they were not happy that the Western general would not have a tram stop and instructed it to go back and examine all the other alignments in order to put a tram stop outside the hospital. TIE just did not do it; it is as simple as that. There is definitely tension somewhere between those organisations.

Kristina Woolnough: The question is how the bill will address those issues. It comes back to the same point: there must be impartial, transparent criteria that demonstrate public benefit. The STAG process should show up some of that, but serious peer review is needed. A promoter cannot be trusted to carry out an appraisal properly.

David McLetchie: I was going to ask about the STAG process, because it is mentioned in Alison Bourne's further submission, which indicates that it was inadequate for the appraisal of alternatives.

15:00

Alison Bourne: To be fair to TIE, the guidance was being introduced as tramline 1 was progressing, but by the time TIE had prepared its STAG 1 document, it knew perfectly well that it needed to have assessed all the routes and gone through the route-sifting procedure according to the guidance. I think that Mr Halliday said to the committee a few weeks ago that that guidance states that projects must be assessed against five national criteria. Because of what I said in my submission, I have brought along a copy of the work package 1 document, which the objectors finally got hold of. That document shows that TIE knew about the requirement to assess alternative links against the five national criteria, but it chose to use different criteria. I have the details with me. The promoter applied the criteria of safety, environment, economy and technical difficulty, which are not the STAG criteria. The purpose of the guidance is to ensure that a promoter will identify a route that is most likely to deliver a range of benefits to the public. Following the guidance provides protection to the public.

David McLetchie: So you think that the responsibility for conducting such assessments and the oversight of projects of such a size should be removed from the promoter.

Alison Bourne: No. I am saying that the promoter should carry out an assessment and that somebody should be there—

David McLetchie: To evaluate.

Alison Bourne: I had to submit two freedom of information requests to obtain the document. Once I obtained it, I knew exactly what I was looking for—the sifting tables to find out about the criteria. That took me five minutes. Somebody who was conducting a peer review would have got hold of the document two and a half years before I did and would have asked within five minutes why the STAG criteria had not been used. The process would not have been long, complicated and expensive—it would have been easy-peasy. One simply needs to know where the information is and to find it.

We are talking about a major flaw in the tramline 1 project, especially given that the STAG criteria were used for tramlines 2 and 3. How can one prove that tramline 1 should have been the priority if all three lines have not been assessed in an identical way, using the same criteria? How can one demonstrate that tramline 1 was most likely to deliver the greatest benefits to members of the public for their money? A reporter could have spotted the problem in five minutes two and a half years before I did and could have said to TIE, "Why have you not used the STAG criteria? Go away and do the work again."

I have a strong hunch that if that had happened, there would have been plans for front-door stops at the Western general hospital and Edinburgh's Telford College rather than for one for British Gas, with its 1,000 employees, and that a stop would have been planned a damn sight closer to Waverley station than on St Andrew Square. Spotting such things is easy for reporters. They know all about STAG—it is not an obscure area of expertise. A reporter could have sorted out the problem when changes could have been made to the alignment of tramline 1 and the public could have seen what problems would have been solved. The line could have served the Western general, the 21,000 students of Edinburgh's Telford College and Waverley station directly. That is the difference that an on-going peer review could have made at an early stage.

The Convener: Colleagues have no more questions to ask, so I thank all three witnesses for giving evidence, which I am sure will be helpful.

I welcome Joanne Teal, who represents McGrigors solicitors. I remind members that in our discussion of the bill, I am happy to accept examples from bills that have been passed, but members should be careful in talking about bills that are in progress, because they are still being considered quasi-judicially. I ask members not to refer directly to the benefits or disadvantages of any public transport bill that is in progress.

I offer Joanne Teal the opportunity to give an introduction, after which we will have questions and answers.

Joanne Teal (McGrigors): I have represented a wide variety of objectors under the private bill process as it was and after its recent change. I broadly support many provisions in the bill and have more practical examples of how it could be improved. I hope to give a practical perspective.

Michael McMahon: Your submission says:

"there also requires to be a mechanism to incentivise applicants to negotiate out objections prior to the examination stage."

Will you give examples of what you mean?

Joanne Teal: When TIE, for example, as a bill promoter considers a bill, it identifies people such as landowners who will be affected and serves notifications on them. Even without speaking to people, it is easy to know their main concerns—they need services and they want their employees to be able to go to and from work safely. Those are easy and practical issues to resolve, yet my experience of representing charities and companies that employ workers and of representing land and property owners is that they have not been approached about the practical issues that are on their agenda.

The promoter has no incentive to make such an approach. It lets the situation trickle on until the date looms on which the committee will meet. My impression is that the clerks then push the promoter hard to negotiate. The promoter does a lot to show that it sends letters, but it does not take concrete steps to address clients' concerns, which could be easily resolved. People do not ask for unreasonable measures, but they cannot rely on a draft code of construction practice or the generic supporting documents as a basis for withdrawing objections—they want specific matters to be dealt with. The process provides no incentive for TIE or any other promoter to negotiate.

Michael McMahon: Would such negotiation speed up the system?

Joanne Teal: Very much so. I mentioned in my submission section 4 of the bill, which is on applications. It provides for the Scottish ministers to make rules about the steps that need to be taken as part of an application for an order and includes measures on the consultation that is to be undertaken, documentation and information. A qualitative threshold could be set so we could say, "Until you come to me with a package that shows that you have spoken to people and anticipated concerns that arise in common property-holding and employee situations, and until we think that you have undertaken a proper consultation and got the usual suspects and usual concerns out of the way, don't bother." That is front-loading and it is exactly what the previous witnesses spoke about. I support that approach.

Michael McMahon: By front-loading, do you mean steps taken before the process starts or before an application goes to a minister?

Joanne Teal: Both, for different aspects.

Michael McMahon: So if negotiations were not concluded by the time a reporter made recommendations, would that be a reason to hold back the process? Would negotiations have to be completed before recommendations were made?

Joanne Teal: Much of the negotiations could be carried out before the application is lodged. I accept that in some situations property owners might act unreasonably, which could result in the matter being referred to the reporter. However, my experience suggests that the vast majority of objections could be knocked out if there was a reasonable qualitative bar at the outset.

Another pertinent point is that, as a result of commonsense feedback from a variety of objectors, some of whom I acted for and some of whom represented themselves, the route of the tramline was changed through what could be described as a bill-within-a-bill process. That should not have happened at such a late stage. We had to take part in this fiction of representing our clients with regard to the original alignment and then, after the intended alignment was introduced, we had to go through the proper process of representation. If there had been a qualitative bar, that situation would not have arisen.

The Convener: Do you agree with the bill's proposal that parliamentary approval should be required only for transport projects of national significance or do you think that, as a result, some significant regional transport projects would not be subject to the appropriate level of scrutiny?

Joanne Teal: In the bill, the phrase "Developments of national significance" is defined in a planning context and, as I am not a planning lawyer, I am not entirely sure what it means. However, I have some concerns about accountability. I agree with the earlier point that an accountability stage should be introduced to deal with cases in which, for example, the reporter's recommendations are not accepted.

I must point out, though, that my perspective on the matter is geared to the front end of objections by individuals and companies. The accountability stage would come much later in the process and I have not had enough experience of that end to be of much help to the committee.

Ms Maureen Watt (North East Scotland) (SNP): You said that a lot of consultation could be carried out before the application is lodged.

Section 9(4) sets out a range of organisations whose objections to a project would trigger a public local inquiry. Is that list adequate or should it include other organisations?

Joanne Teal: I had a look at that list, which includes national park authorities, local authorities and landowners. The bulk of the people for whom I have acted fall into the third category, but I have also represented people who are not landowners but who institute planning inquiries or carry out vast consultations in communities on, for example, regeneration projects. Although they might not own land, they invest a lot of money in consulting communities and they have interests, which could of course include land ownership. However, they would not be able to trigger a public inquiry.

I understand the need to strike a balance between driving forward a project and taking into account private and community interests. However, looking again at the list, I note that the objectors I referred to would not be able to trigger a public local inquiry. That could in some cases lead to unfairness or, at the very least, dissatisfaction in a community.

Ms Watt: The previous witnesses said that people do not get involved in the drawing up of local plans unless a major development lands on their doorstep. How can we get communities and other interested bodies involved earlier?

Joanne Teal: With the tramline bills, there was an exercise that was called a consultation and the tramtime leaflets were produced, but they were more like advertising flyers. They did not amount to a proper consultation. There should be a bar at the beginning of the process so that, in order to make an application, the promoter has to trigger a proper, meaningful consultation. It should be possible for the promoter to be told, "No. Go away and do this part again, because you have not engaged with people properly."

It is good to have meetings. I act for lots of local authorities and it is always difficult to engage people, but if one tries a variety of methods and considers what has worked before rather than just producing a flyer with the option for people to tick a box to say yes or no to the whole scheme, it is possible to get responses that are worth looking at.

15:15

Paul Martin: Would it help if members of the public could apply to an appeals process or a judicial process—or something between the two—and say, "We do not think that there has been a meaningful consultation"?

Joanne Teal: Yes. I suppose a provision could be introduced in the bill so that, unless a qualitative bar is passed, the promoter has to go back and do the consultation again. However, who would decide whether the bar had been passed? Would it be the minister, perhaps even when they were promoting their own bill, or would it be somebody impartial? It might be a good idea for the reporter to have that role earlier in the process.

It is important for the process to be seen to be impartial. If a member of the public is unhappy with the level of consultation, and the decision about the adequacy of the consultation is taken by someone who represents the promoter, they will not feel that the decision is impartial. However, there could be a role for the reporter earlier in the process.

Paul Martin: Does your company have any information on how such objections are dealt with in other countries?

Joanne Teal: I am sure that I could get that information, but my experience is of Scotland and, to some extent, of harbour developments in England and Wales.

I am intrigued by the drafting of section 9, which states:

"The Scottish Ministers may cause a public local inquiry to be held"

and goes on to say that, in certain circumstances, there will be a public local inquiry because certain categories of people request it. However, what happens if everything is negotiated out and there are no objectors left? In England, promoters work hard to negotiate out every last objection because, if they can do that, they are allowed to skip the inquiry. It might just be my reading of the bill, but I do not think that that situation has been dealt with. I looked at the Scottish Parliament information centre briefing, but I could not see what would happen in that scenario.

Tommy Sheridan (Glasgow) (Sol): My question is linked to the point that you just made. In your submission, you mention the idea of a mechanism to incentivise the negotiating out of objections, which you say is done in England. Will you give some examples? Is it the case that objections are genuinely negotiated rather than ignored or sidelined?

Joanne Teal: Unless a person feels that the promoter has addressed their concerns—for example, about access or safety issues—they will keep their objection in place and an inquiry will be triggered if the person is in one of the categories of people who are entitled to ask for a reporter. However, some parties could fall into a black hole because they do not own land and they are not a national park authority or a local authority. We might think that they have a valid claim to ask for

their concern to be heard, but they will not have the right to trigger an inquiry.

The incentive for the promoter is that, if they can negotiate and satisfy the objector's concerns so that they withdraw their objection, there does not have to be a public inquiry. The incentive to negotiate could also be introduced at an earlier stage if the promoter could be knocked back from an application process because it could not demonstrate that it had properly engaged. The number of times I have had correspondence with a promoter that just repeats its last position or refers to a draft code of construction practice as if that is going to make me recommend to my clients that they should withdraw their objection. How could I possibly do that without my negligence insurance premiums going up massively?

There is no incentive for promoters to propose a proper, commonsense, sensible solution that will allow me to tell my client that they do not need to bother with the expense of a witness statement because we have a satisfactory solution to all the concerns that they have raised, and that we can withdraw the objection and enter into a binding legal agreement that satisfies my client that their workers can come and go safely, that they can still park nearby and that they do not have to get rid of their disabled parking spaces, for example. All those issues have come up before. It is not rocket science—the issues are not complicated—but there are no incentives.

Tommy Sheridan: Is there room in the bill to add an extra tier, so that if a promoter can show that they have already engaged in negotiations on objections before they submit plan B—assuming that plan A is the one that caused the original objections—plan B should be fast-tracked? I am trying to figure out how you would express that incentivisation in legal terms.

Joanne Teal: One way would be for a qualitative bar to be applied before the application process and the period for lodging objections. It would be about the quality of the discussions into which the promoter had entered and of the information that it had provided, such as whether traffic surveys were carried out to see how many people and cars go in and out of the area. All that must be front-loaded in the process. It would make the process less expensive for those individuals who find themselves embroiled in a private bill that they did not see coming, for example if the first they heard of it was when they received formal notification with the attached plan showing the plot where they work. That is not the best way of carrying out the process now.

Refusing to start the process before the engagement with people who will be affected has reached a certain standard is not a huge step. That is my main point about introducing a qualitative bar right at the start of the process—if the promoter does not meet that standard, it will not get past go. There could be other stages beyond that, especially if there is a concern about what would trigger an inquiry and who had the right to do so. The details of that are going to be in secondary legislation, so it is impossible to know right now whether the bill will do what it claims it will do.

Tommy Sheridan: My final question links to that and is about projects of national significance. You said that you are not a planning lawyer and that the bill is hedged in planning terms. Would there be a problem if politicians wanted a particular project to be of national significance or did not want it to be of national significance? Does the term "national significance" not have to be given a bit more legal weight and understanding so that everybody can interpret it?

Joanne Teal: Yes, because otherwise a lot of lawyers will make a lot of money out of it. The term will never be tied down and its meaning will always be up for grabs. I know that this has been discussed in the committee before. I agree that the term needs to be defined, otherwise I predict that there will be problems. However, I do not have any useful information to offer from my own experience.

David McLetchie: My question continues the discussion about incentivising to negotiate out objections. Do you accept that your argument starts from the premise that the objections are valid in the first place and that the objector requires to be compensated through some kind of agreement?

Joanne Teal: Yes.

David McLetchie: But if you incorporate into the system a prior requirement for negotiation, that assumes that there is an objective way of evaluating what is and is not a valid objection, which would not necessarily be accepted. What you regard as a valid objection I might think is a spurious one.

Joanne Teal: Yes. When you think about it in the abstract, you can think of lots of problems, but when you plug in a scenario, it does not seem so complicated in practice. It is probably one of the few things that seems less complicated in practice.

For example, somebody who owns a building or a pensions charity that wants to carry on operating from its site will have a list of obvious concerns, just like any other business that is trying to operate in an area where there is going to be severe disruption due to a big transport project. There could be a scenario in which an objector is unreasonable and is asking for far too much. However, if it could be demonstrated that the promoter had engaged with services, safety and

access topics at the beginning of the process and had asked for the relevant information—although there might be situations in which people are unco-operative—its time would have been well spent. Without that, there might need to be a bill within a bill, as the promoter might need to change the route halfway through consideration stage because simple questions were not asked at the beginning and the first that people heard about the project was notification of it landing on their doorstep.

In theory, there could be a difficult objector. However, in practice it is possible to make the process more objective and set down certain things that need to be looked at. There is a power in the bill to allow people to enter land to take samples for environmental purposes, for example. When I looked at that, I imagined a really helpful situation in which people entered an area and surveyed traffic or people's routes to and from work, for example. That would be really helpful in some busy hubs, for example Haymarket. Both tramlines will go through Haymarket, and it would have been helpful to have had that objective information to point to.

There are steps that can be taken to make the process work, and it is worth taking the time to look at those rather than letting it drag on and on, especially when there is a feeling that people are being asked to speak but are not being heard and there is no opportunity for things to change because a project is too far down the line.

David McLetchie: The general law has a compensation structure built into it in relation to the compulsory acquisition of land and land that is materially affected by developments. Given that that is the general law of the land that applies to all schemes, why should we put into the bill processes and steps that would make the process more expensive, because the promoter would have to satisfy everybody in advance and incentivise them? Some people would say that incentivising to negotiate out objections is basically buying people off on a statutory basis.

Joanne Teal: But hardly any money is ever exchanged—it is just about practical issues such as someone being told that they do not have to change their emergency procedures; that they can still use an exit at the back of their office; or that they can still use a bomb disposal chute, in the case of the Post Office. When compensation is mentioned, money issues immediately come to mind, and objectors are always confused by the complex arrangements surrounding compensation and blight issues. However, I am talking about more practical issues, which arise in cases in which there is no intention to sell land or in which people want to carry on with business as usual, to the extent that that is possible. Such people need to be given assurances. The bulk of the work that I have done has not been to do with the selling of land.

The private bill committee clerks do a sterling job producing lists of objectors and summarising the issues that are raised in objections. If one looks at the issues that objector groups feel strongly about, one finds that many of them are to do with what their surroundings will look like once the project has been completed. Someone who has paid for their site wants to be able to carry on working there or to ensure that it is not turned into a concrete roundabout. The issues that come up are not always about money: for example, a company might simply want to know what the promoter's landscaping provisions are.

When I have raised such concerns with the promoter, I have often been sent the text of a draft policy document that includes a flimsy statement of intent for the whole project, to the effect that the landscape will be reinstated whenever possible. Such statements do not provide a sufficient basis for me to say to a concerned client, "Don't worry, because the matter is addressed in this supporting document." I cannot do that, because the statements are not specific enough.

Even though the bill emphasises up-front resolution, in many cases there might still be compensation issues. However, I have not been involved in work on such matters; my background has been dealing with the practical issues that I mentioned in my written submission.

15:30

The Convener: That is all the questions that we have for you. Thank you for your evidence, which has been insightful.

We move on to our third panel, which comprises representatives of Network Rail. I welcome to the meeting Ron McAulay, who is the company's director for Scotland, Nigel Wunsch, who is the principal route planner, and Karen Gribben, who is a legal adviser.

I ask witnesses and members not to refer directly to the advantages, disadvantages or otherwise of specific aspects of the project that Network Rail is promoting in the private bill that is part of the way through its parliamentary consideration. Rather than engage in a debate on the pros and cons of particular aspects of that project, the Network Rail representatives should focus on the processes in the existing system and whether the bill will improve them.

I invite Ron McAulay to make some introductory remarks.

Ron McAulay (Network Rail): We welcome the proposed introduction of a mechanism that will

help to facilitate faster consideration of transport works and projects. However, we recognise—as I am sure the committee does—that any change to the existing system must ensure that processes are put in place to protect the operational interests of any affected parties, which should include sufficient consultation, a preserved right of objection to protect operational interests and, if appropriate, consideration by independent parties. I believe that the bill will do that.

We want to draw to the committee's attention a key issue that we raised in our written submission, which relates to the proposal on statutory rights of access. We fully accept that, in principle, there is a need for people to be able to secure approval to enter land for preliminary investigations and that applications for such approval should not be constrained by a lengthy process. However, in the interests of safety and to ensure the operational reliability of the railway, it is unacceptable for Network Rail, as the statutory undertaker, to allow anyone to access an operational railway without our permission. It is essential that only people who are properly safety qualified can access an operational railway and that such access is made at a time and in a manner that does not introduce risk to the operation of the railway or to personnel. The accessing of operational railways by unqualified people is an unacceptable safety risk and would have to be considered in terms of some of the conditions in the bill.

The Convener: I presume that existing legislation would prohibit unqualified persons from accessing an operational railway and that this bill could not supersede United Kingdom health and safety legislation.

Ron McAulay: I hope that that would be the case, but the bill is quite specific about giving the promoter the right to access land. It is worth emphasising that the health and safety aspects of railways should overrule anything that would arise from the bill. The matter is of extreme concern to us.

The Convener: Effectively, you are arguing that if, for example, access were required to operational Network Rail property, that would not be obstructed but qualified railway personnel would be required to supervise the presence of non-qualified people.

Ron McAulay: Exactly. We would not try to hinder access, but we would not expect someone to turn up on a Monday morning and say, "We have an act that says that we can just walk in."

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): That seems perfectly reasonable and I am sure that your point will be taken account of in the appropriate way.

I have three questions. The first relates to who would be the best promoter of a railway scheme; the second concerns clarification of the point that you made in your letter of 28 August about voluntary purchase schemes, which I did not fully understand; and the third relates to heritage railways.

First, without mentioning any project in particular, I should say that it occurred to me that a body such as TIE is, perhaps, not best placed to be a promoter of a railway scheme. As I understand it, Network Rail is the licensed operator of the railways, which means that you have the responsibility of ensuring that the changes that are made to the rail network in Scotland fit in with all your other obligations to ensure that the trains run on time. It seemed to me that fielding a body such as TIE for the task instead of Network Rail is a bit like having access to the Brazilian, Italian or French football teams and then deciding to put on Monaco or Andorra instead. I am not trying to butter you up—although I might be doing so—but I would like to know whether you think that it would make more sense to require Network Rail to be in charge of promoting a scheme, given that any scheme on the rail network will have ramifications—sometimes quite severe ones—for the rest of the network.

Ron McAulay: It is kind of you to compare us with the Brazilian, Italian and French football teams. I am not sure that the Italians are doing so well at the moment, but never mind.

The Convener: They are world champions.

Ron McAulay: Yes, but they only drew one all with Lithuania or somewhere like that.

Anyway, back to railways. There is no doubt that any project that impacts on the current rail network requires a huge amount of involvement on the part of the network owner and operator, which is, of course, Network Rail. We will be involved to some extent in all the projects that are going forward at the moment. There is an argument that it should be Network Rail that promotes the schemes from beginning to end. That is a possibility, but I would not have said that it would be a definite given. I am sure that Strathclyde partnership for transport and TIE are perfectly capable of promoting bills, providing that we have plenty of good dialogue to ensure that all the issues are addressed.

Fergus Ewing: I appreciate that, but would it not be possible for a geographically based body, such as the Highlands and Islands strategic transport partnership, the south-east Scotland transport partnership, another of the new regional transport partnerships or a local authority, to take a scheme up to a certain stage, representing the local area, its people and their aspirations, but

then to have the scheme come to you? Before it goes forward to the reporter—or whatever the procedure becomes—you could effectively become the statutory agent so that, at that early stage, all the timetabling problems and so on could be considered before the parliamentary process was reached. Otherwise, you could end up being asked whether the timetabling will work, for instance, and you would have to answer, "We can realistically predict that it may be a possibility." If we want to avoid such situations, would it not be better if you could act as a statutory agent in cases in which schemes have come from a body that represents a strand of opinion or geographical area?

Ron McAulay: There will always be different ways of doing these things. Network Rail is an enthusiastic promoter of railway schemes and is keen to be involved in any proposals that will affect the network in the future, but it would be wrong of me to rule out the option of another organisation being the promoter. Some organisations have greater, or lesser, levels of expertise compared with Network Rail. Some councils will be well placed to kick off a process and then hand it over to another organisation. It would be wrong to say that we are the only organisation that could possibly promote bills or railway schemes, but we are very keen to promote those that result in the expansion of the railway, not just in Scotland but throughout Great Britain.

Fergus Ewing: You have statutory responsibility under railways legislation to deliver the instructions of the Executive to provide a new rail route from A to B. Is it correct to say that the Executive would instruct you to deliver?

Ron McAulay: There is a process that allows the Scottish Executive to specify its shopping list, if I can put it that way, over a particular regulatory control period. That is called a high-level output statement. The Scottish Executive could undoubtedly include in that statement something like "Deliver us a railway scheme that goes from wherever to wherever"; I will not say a scheme that goes "from A to B", as one is already doing that.

Fergus Ewing: Perhaps we can ask the minister about that later.

I turn to your letter, which relates to the voluntary purchase scheme and section 26 of the bill. That section states that there will be powers requiring the voluntary purchase of properties that are not required for the delivery of a rail scheme, but

"which are, or may be, adversely affected"

by that scheme. You welcome that—that is fine, and I understand the point. However, I did not understand the part of your letter that says:

"However, we are concerned by any suggestion that there should be a link between a VPS approach, funding of such a VPS and schemes to be authorised under the new procedure generally."

I am afraid that I did not understand what you were driving at there. I am sure that there is something very Machiavellian going on underneath. Could you make that plain for the simple mortals who are facing you?

Ron McAulay: I ask my colleague Karen Gribben to give you a clear explanation.

Karen Gribben (Network Rail): Thank you—I am being set up for the fall here. It will be simpler if I explain what we think a voluntary purchase scheme and an advance purchase scheme should do. If the committee will bear with me, I will repeat to some extent the evidence that we gave yesterday to the Airdrie-Bathgate Railway and Linked Improvements Bill Committee.

We do not think that a one-size-fits-all approach works in the context of major rail projects, with an initial premise that it will automatically be possible to confirm everyone who is affected. The interaction between the project and the people involved in it must be considered. Some of the issues do not come out until the detailed design stage, particularly when it comes to the voluntary purchase element. It is possible to tell which properties are directly affected by the project—certain things cannot be moved from in the overall outline design. In the VPS situation, mitigation measures will often be taken. It is a matter of working with the affected home owners or businesses to find measures to mitigate the situation. If it is not possible to find such measures, it then becomes a matter of acquisition, which involves going through a process of iteration to calculate and assess the monetary considerations.

That is what we were trying to get at. It is very oblique in the letter, unfortunately, but we are saying that it is not possible to assume automatically that, when you submit your statement of expenses, you will have a cast-iron view on where the VPS elements will go. It is a process of iteration, working with the affected home owners.

15:45

Fergus Ewing: Is your objection that any scheme might be stymied because insufficient financial provision has been made for the voluntary purchase of property?

Karen Gribben: That is a risk, because the VPS elements have not been fully identified.

Fergus Ewing: Can the risk not be catered for through a risk allowance of some sort?

Karen Gribben: Of course—there are many ways to address the problem. However, we would not want there to be any absolute determinations, with no room to revisit the situation. That would not be an appropriate way of dealing with the impact of a project.

Fergus Ewing: Thank you—I think that I understand a little, but not fully.

Karen Gribben: I apologise if the explanation was oblique.

Fergus Ewing: It would be helpful if you could give us some examples. It seems to me that this could be a serious issue that could stymie many projects. The price of a project could escalate because of the difficulties of ascertaining which properties would require voluntary purchase as opposed to compulsory purchase. I am not sure that I have sufficient grasp of this; perhaps other committee members do and I am a slow student. It would be helpful to have examples before we hear from the minister next week.

Ron McAulay: We would be happy to provide that information, and we will try to lay it out as clearly as possible.

Fergus Ewing: If there is time, convener, I would like to come back to a constituency matter later on.

The Convener: Okay. Does Mike Rumbles have a question?

Ms Watt: Fergus Ewing had another point.

The Convener: No—he is saving it for later.

Mike Rumbles: Section 21 of the bill says:

"No order is to be made under the Light Railways Act 1896".

The committee has received written evidence from the Deeside Railway Company Ltd, which is in my constituency, saying that section 21 would cause the company real financial problems. It is a small company, like many other heritage railways across the country. I do not understand why that provision is in the bill; why do you think that it is?

Ron McAulay: I am not sure that I have an answer. To be honest, we have not considered the issue closely.

Mike Rumbles: Section 21 will affect the company.

Ron McAulay: I do not doubt that it will affect the company, but it will not affect us, which is probably why we have not considered the issue closely.

Mike Rumbles: Okay, thank you. Perhaps we can ask the minister about that when he comes, or even invite another witness to give us some information on the issue.

The Convener: I know that Fergus Ewing wanted to raise that issue, but in light of Network Rail's response do you want to save it for the minister?

Fergus Ewing: I have been gazumped by Mr Rumbles—and, to use a Rumblesesque phrase, that is an utterly appalling position to be in.

Mike Rumbles: But you had two bites at the cherry.

Fergus Ewing: Mike Rumbles has raised the point and we will ask the minister about it next week.

David McLetchie: I want to revert to the point that Mr Ewing raised about voluntary purchase schemes—probably because I did not understand enough about the issue to start with.

I have a slight conceptual difficulty with the whole idea of a voluntary purchase scheme being in legislation. It seems to me that, if I am promoting a project and want to build a railway line or a bridge or whatever, it remains open to me at any time to go to any landowner and say, "I want to buy this," or, "I want to buy that." I think that the phrase used by a previous witness was "incentivising people to negotiate out objections".

What is the big deal? Why cannot any promoter buy what it needs from someone who may or may not be affected by a project but who may be felt to have a pertinent interest? Why does the measure have to be in the law of the land?

Karen Gribben: Your position is broadly correct: people can indeed go and buy. Obviously, there are separate rules about the triggering of compensation, depending on whether a property is blighted. We can put to one side the properties that would be subject to compulsory purchase, but for other properties it would be open to you to offer to buy if you thought that that could lead to a benefit for the project.

Obviously, for a publicly funded project, you would have to be able to account for the reasons why you chose to do that and for the amount of compensation that you offered as part of the purchase process. To repeat the evidence that we gave yesterday on the Airdrie-Bathgate Railway and Linked Improvements Bill, although we consider that there are no voluntary purchase candidates, we will keep the situation under review, and if there were such candidates, we would operate under the code of compensation to ensure clarity of expectation and that how we would approach any purchase was understood. Does that system need to be enshrined in legislation? It works at the moment—people make voluntary purchases and private treaties.

David McLetchie: That is my point. Why are we discussing it? Why is it in the bill?

Karen Gribben: We do not see the need for specific powers.

Ron McAulay: Karen Gribben has covered the point. At the moment, we do not envisage the need for a VPS in our Airdrie to Bathgate project, so we have difficulty understanding why the provisions are in the bill.

David McLetchie: We are at one on that. We will ask the minister.

Mike Rumbles: Another one for the minister.

Ms Watt: Much of the bill is based on the current legislation for England and Wales, of which the witnesses will have had specific experience. Have they found that, under the Transport and Works Act 1992, developments are delivered more quickly and cheaply than is likely to happen in Scotland under the new procedure?

Ron McAulay: I confess that I have no personal experience of promoting a development under the TWA in England and Wales, and I do not think that my colleagues have either. My impression is that the TWA process can be rather lengthy, which would worry me. I think that if someone were to pull together the statistics on the time taken to put through a development under the TWA in England and Wales, they would find that it takes longer than the current process in Scotland.

That does not have to be a given. It is a case of ensuring that the Transport and Works (Scotland) Bill includes aspirational timescales for each stage. The bill includes such provisions; for example, it states that the minister must deal with something within six weeks. I would hope that an element of discipline was attached to those aspirational timetables to ensure that the process did not become terribly long. If it did, those affected by the project would be in a state of uncertainty for much longer.

Karen Gribben: It is difficult to compare the time that each project takes, because they are all incredibly specific. A lot of it comes down to how well the promoter prepares in advance, which is a fundamental issue that the bill seeks to address in front-loading the work to ensure clarity and transparency, and to how many properties are affected. A major infrastructure project in a built-up or congested area unfortunately takes time—as it should, because there has to be a full exposition of the issues and an opportunity for people to put their case. Many of the projects in recent years have involved heavily built-up or congested areas, so there have been a great number of objections to consider. That inevitably affects the time that the process takes.

Ms Watt: Is it possible that the process is used to delay a project because of other factors, for example if funding does not exist, and then gets the blame?

Ron McAulay: Any process has that risk, but I would hope that promoters would not attempt to hide behind such excuses. I would hope that if there were issues with the financing of a scheme, it would not appear in front of the Parliament in the first place. As part of the private bill procedure, we have to provide confirmation that funding is in place or that there is a will to fund the project. I would hope that something similar would apply in the Transport and Works (Scotland) Bill.

Paul Martin: I want to go back to front-loading and preparation. Most witnesses have said that they support that, but I suppose that organisations such as Network Rail would become more concerned when we get down to the detail. Would you be concerned about a fiercely bureaucratic process that required a number of boxes to be ticked and the spending of quite substantial funds that could have been spent after the project had been approved?

Ron McAulay: We listened to the evidence of Joanne Teal from McGrigors. In principle, I agree with her that many issues should be resolved up front. A great deal of effort should be put into consultation, to explain proposals to people before a bill is introduced. Joanne Teal spoke about a qualitative process, but I would like to see what such a process looked like. Qualitative processes can be subject to all sorts of different interpretations. Who would give those interpretations? Such issues would have to be addressed.

Not every project is the same. As Karen Gribben explained, in each case there are many different issues. Human beings take different approaches to resolving objections. In many cases, it may be impossible to resolve an objection because a person views it as a principle on which they are unwilling to move. Such issues worry me. If we had a bureaucratic process that insisted that boxes should be ticked to indicate that all objectors had gone away and were satisfied, that could be extremely difficult.

Paul Martin: Previous witnesses questioned the objectivity of the assessment process. Do you see that as a problem? They are concerned that any assessment that you carry out could be reconfigured or that someone could find a way of saying what they want in the final report, although that does not reflect the way in which the process was conducted.

Ron McAulay: There is no question but that two people can interpret the same thing in different ways. It is hugely important that in the consultation process the promoter stops and listens to what is being said to it. If what is being said is sensible

and reasonable and there is an alternative way of addressing issues, the promoter should try to address them differently. However, the promoter is operating within certain constraints. It may cost an extra £0.5 million to resolve an objection. Is that reasonable? Is it good value, and does it make proper use of public sector money? It is very difficult to satisfy everyone completely. In fact, it is probably impossible.

Paul Martin: I agree.

Ron McAulay: Dare I suggest that not one politician sitting around the table received 100 per cent of the vote in their constituency?

Mike Rumbles: Fergus Ewing is hoping.

Karen Gribben: When dealing with private bills or with orders under the Transport and Works Act 1992 in England and Wales, we find that a great deal of the information that people are seeking is information that we are unable to provide until the detailed design phase has been completed. As Ron McAulay said, in public projects we need to consider how far in advance to go through the detailed design process, because if the ultimate determination is that a project should not go ahead there will be a lot of abortive and sunk costs. However, we have learned from and built on the experience of others who have taken private bills through the Parliament. The consultation process improves with each bill.

Fergus Ewing: I forfeited my original third question, so I will ask an entirely different question that encompasses the scope of the bill. It relates to the pressure that Network Rail and the engineering sector—First Engineering Ltd and so on—will be under to deliver rail projects. As well as the many plans for major national projects there is your route utilisation strategy, which identified 29 gaps and 44 action points all over Scotland and produced a programme estimated at £300 million. You will recall that last September Janette Anderson made a controversial contribution to the debate, suggesting that the public sector was far too cluttered, that she did not really know who was in charge of delivery and that work on the London Olympics, which will go ahead shortly, may suck all the capacity from Scotland, so that we are left with a lot of transport projects that we have approved but no one in Scotland to do the work. What is your view on that issue?

16:00

Ron McAulay: I share the concerns that you are expressing. We need to ensure that we resource those projects properly, so that we can deliver them efficiently and effectively and so that we do not find ourselves with an overheated market that gives rise to escalated costs.

I have said in the past, and I shall say again, that, with careful planning, we can get round those issues, but careful planning requires a joined-up approach to the projects that are being proposed. They must be joined up not only with other railway projects but also with the renewals work that Network Rail will be doing in Scotland and elsewhere. By trying to plan those resources properly over the timescale that we are talking about for delivering the projects, we should be able to reduce the risk of finding ourselves with inadequate specialist resources to be able to deliver all the specialist bits and pieces.

One example is signalling resources. We have a big signalling renewal project, and we must ensure that we plan that around the work that is required at Waverley station and the work that might be required on the Glasgow airport rail link and so on. If we plan around those projects, we can ensure that the work is co-ordinated right across the patch. Providing that we all take a sensible approach and do not get too hung up on the commandment, "Thou shalt meet an absolute deadline date," and if some flexibility is allowed, we can make it work.

Fergus Ewing: That is encouraging. We are not allowed to talk about the projects that are currently under way, but it is fair to say that many of the top-level rail projects have been significantly delayed, from their intended timetable to a much later planned arrival. Given that that is the case, is not there a risk that there might be a substantial period, perhaps of a year or so, in which no work can be done, or in which there would be only very little work, insufficient to use the available capacity?

We heard evidence from Alan Watt of the Civil Engineering Contractors Association (Scotland), who argued successfully and persuaded the Executive to change its approach to trunk road works. The M74 was delayed through court action, which meant that the Executive had to fill the gap with the Dalkeith bypass, the Kincardine bridge and some other works that it had prepared. If it had not had those works in a preparation pool, on the prompting of people such as Alan Watt, there would have been nothing for the firms that rely on a steady chain of work—the big engineering companies—and all the people whom they employ to do. However, the committee was able to persuade the Executive to take a preparation-pool approach.

Is there a comparator in the rail sector? If so, can you explain how it works? If there is not, do you think that there should be an equivalent to the preparation pool for road works, so that not only can we get the projects but we can ensure that there is a steady stream of work, so that the

companies that actually do the work have the work to do?

Ron McAulay: There are two parts to my response. First, to ensure that we balance the workload that we are giving to specialist railway contractors across the country, we should examine the situation not only in Scotland but in Great Britain, taking into account the pool of projects that have been proposed south of the border. We should ensure that that is balanced out as much as possible and, to a large extent, Network Rail already does that in its overall forward planning.

Still on that first point, we also have some fairly good discussions with Transport Scotland on that very issue. We are able to put into the pot what we are doing in Scotland by way of our renewals programme and major enhancement projects, and Transport Scotland is able to feed in what is happening with major road schemes as well. That helps to bring an overall programme together, so that we can see what the likely resource requirements are. It is early days with that work, but we are beginning to get a clearer picture.

My second point is that we should remember that many of the projects that are being dealt with at present will not necessarily require rail-only contractors. For example, a large part of the Glasgow airport rail link, the bill for which is going through the Parliament, involves a viaduct that could be built by a civil engineering contractor that is not experienced in rail projects. By considering the projects sensibly, we can open up the pool of available resources to feed into the schemes.

Nigel Wunsch (Network Rail): Ron McAulay is absolutely correct. We are working closely with Transport Scotland on the development of other much smaller projects, such as some of the measures in the route utilisation strategy, which Fergus Ewing mentioned. We are developing projects that can be turned on or off at the right time, depending on the contractor and fund flow at that time. In effect, although we do not use the term "preparation pool", we are developing projects in the background that could be implemented at an appropriate time to develop the existing railway.

Fergus Ewing: I am grateful for that response. It would be interesting to hear from the private sector, which has to deliver the work, to find out what its take is. The view that Janette Anderson gave just a short while ago was particularly critical. It might be useful for us to get an update on that, as we are considering the issue in so much depth. Perhaps the Minister for Transport can help us out, as always.

Ron McAulay: I can give some specific details. The Stirling-Alloa-Kincardine railway project is to be completed by about July of next year and the Waverley project, which is on-going, is to finish at the end of 2007 or the beginning of 2008. We hope to start additional work on the Bathgate branch, which does not require parliamentary powers. Work will come in as other work finishes. In addition, as Nigel Wunsch said, we have proposals for projects in our route utilisation strategy, some of which are a fairly significant size. There is a pool of projects. We can almost start to see the balance of that emerging.

Fergus Ewing: If I may say so, cutting by 45 minutes the journey time for the train service from Inverness to Perth and through to Glasgow and Edinburgh seems to me to be a good priority for early scheduling in your preparation pool.

Ron McAulay: I could not possibly comment on that, as I live north of Inverness—but I agree with you.

The Convener: That takes us to the end of our questions. Thank you for that non-comment in response to the final question. I thank the three representatives of Network Rail for their evidence.

I welcome our final witness for today, who is James McCulloch, the chief reporter with the Scottish Executive inquiry reporters unit. The committee felt that it would be useful to hear from the unit because of the impact that the bill will have on the reporters' workload. We are interested to hear your views on the progress of the bill and your perspective on whether the proposals will be an improvement on the existing system of approval for major public transport projects. I will allow you to make any introductory remarks, after which we will move to questions and answers.

James McCulloch (Scottish Executive Development Department): You have had a long afternoon, so I do not propose to say very much by way of introduction: I will simply set the context. Thank you for the invitation to speak to you.

I head the inquiry reporters unit, which provides a service to the public—it is important that it is seen as a service-delivery organisation—ministers, the Parliament and business and industry in promoting developments. Our primary business is determining or making recommendations to ministers on planning appeals. We deal with roughly 1,150 to 1,200 appeals a year, but our caseload is growing all the time. We also deal with objections to local authority development plans, transport orders such as compulsory purchase orders and side-road orders—all the stuff that delivers major transport schemes—and, on behalf of the private bill committees, we are dealing with the three private bills that are going through the Parliament. We are providing a service to those committees.

You have heard quite a lot about planning modernisation. The Planning etc (Scotland) Bill is going through stage 2 at the moment. Ministers' objectives are to improve the efficiency and inclusiveness of the process that we operate. In future, we will be expected to operate in transport and works the process that we operate in planning. I am sure that the objectives will pass across to the Transport and Works (Scotland) Bill in that we will be expected to be efficient and effective in discharging our responsibilities, be as inclusive as possible and generate inclusion in the processing of cases.

The Convener: Thank you for those remarks. To what degree was your unit involved in giving the Executive advice on the drafting of the bill?

James McCulloch: The unit is not formally involved in giving advice, but we have been asked for our views on some of the provisions—and the policy memorandum in particular—the nature of the process that we envisage the bill enabling and the financial implications. We are part of the Scottish Executive Development Department, but we are located away from ministers—in Falkirk, rather than in Edinburgh—to keep us at arm's length.

The Convener: You said that you have discussed the financial implications of the bill. I presume that that includes how many staff you will need to employ to provide services. Has any agreement been reached between your unit and the Executive about the workload implications and has the Executive made a commitment to meet the costs?

James McCulloch: The policy memorandum suggests that the costs of the unit's involvement in processing transport and works act inquiries will be recovered from the promoter. As far as my unit's budget is concerned, the legislation should be cost neutral in any year, because we would simply take the resources back in.

On the work that might be involved, the conclusion that has been reached is that we would simply be replacing processes like for like. For example, we have been involved in the Kincardine bridge, the M74 and various other major road proposals, such as the Glasgow southern orbital route. We will still be involved in the future, but under a different statutory process.

The Convener: On the recovery of costs from the promoter, from the point of view of the Scottish Executive will the process not be circular, given that although many of the projects that are being developed are promoted by third parties, they are often supported by Executive funding?

James McCulloch: That could well be the case.

Mike Rumbles: I am trying to add to your workload, because I have lodged amendments to the Planning etc (Scotland) Bill on third-party rights of appeal, which will be discussed tomorrow morning.

James McCulloch: Terrific. Thank you very much.

Mike Rumbles: I would not worry about it, though.

The Convener: If they were lodged by Mike Rumbles, they do not have much chance of success.

Mike Rumbles: The concern has been that the previous process was too long and drawn out. We are being told that one of the advantages of the Transport and Works (Scotland) Bill is that it will make the process quicker, because it will involve your unit. Do you agree with that? Do you think that the process will be more streamlined and therefore provide a faster service to the public?

16:15

James McCulloch: To reach that conclusion, you would have to see it in terms of the overall package. A developer who is seeking an authorisation under the act will be expected to front-load their proposal—the committee has heard that several times this afternoon, even in the short while that I have been in the room. That means that, before a developer seeks an authorisation from ministers and the Parliament, they will ensure that they have engaged properly with the community that is affected by the development. That will have an effect on the nature and range of the objections that have to be processed by way of an inquiry, hearing or written submission.

We expect there to be better engagement with the community and—as was reinforced in some of the evidence I heard this afternoon—a reduction in the misunderstandings that can lead to objections being made, and then maintained throughout the process. The inquiry or examination stage at the end of the process should therefore be shorter, which should make the process more straightforward and concentrate minds on the crunch issues that are in dispute between the statutory bodies, the community and the promoter. We hope that the inquiry stage will be shorter.

Mike Rumbles: I have one further question. Concern has been raised about accountability in terms of the independent reporters unit making its reports to ministers. Cases such as a previous Minister for Transport's decision to reject the independent reporter's recommendation on the M74 come to mind. Is that usual or unusual? What

proportion of your recommendations to ministers is overturned?

James McCulloch: A very, very small proportion.

Mike Rumbles: Such as?

James McCulloch: Fewer than 5 per cent.

Michael McMahon: I am not sure whether you heard the evidence from our first panel this afternoon, on their experience of the private bill process.

James McCulloch: Unfortunately, I did not.

Michael McMahon: If I may, I will read you an extract from the Blackhall community association submission. The core of its concerns is that

"There should be additional independent third party scrutiny where the Promoter of a scheme is either the Scottish Executive, Transport Scotland or a local authority in order to ensure that projects actually meet public need and are financially viable, rather than represent a politically-driven agenda. Appointing a Reporter may not achieve this".

Do you want to comment on that?

James McCulloch: The reporter is appointed to scrutinise objections. Under the bill process, if the issues are substantive and they have gone through the filtering process that is envisaged, they will go before the reporter and a recommendation will be made to ministers. Those matters could be considered and included in the reporter's recommendation.

Michael McMahon: But what about peer scrutiny? The association calls it "third party scrutiny".

James McCulloch: Ministers might not take very much notice of what is said in that way. In this context, I am not sure what is meant by peer scrutiny.

Michael McMahon: I am not sure, either. We tried to get the evidence from the witnesses. Essentially, they are concerned about the hurdles that objectors have to overcome. They want to see some form of independent, external assessment of whether the hurdles have been crossed.

James McCulloch: Right. I assume that the people from Blackhall community association are concerned about one of the tramline routes.

Michael McMahon: Yes.

James McCulloch: I am really at a loss to understand their real concern in that regard.

The Convener: One of the assertions in their evidence is that the Edinburgh Tram (Line One) Bill did not go through the full STAG process. They want a system in which independent transport experts are asked to say whether every aspect of the STAG appraisal has been followed, and so forth. If the process has not been followed, they want objectors to be able to use that information to put pressure on the promoter to meet the requirement.

James McCulloch: Fair enough. If objectors perceive a defect in the process—whether in STAG or in the EIA regulations—and they make that point as part of their objection, it would have to be considered. If the reporter did not have the technical expertise to make that assessment, that capacity would have to be brought into the inquiry process to advise him and then to advise ministers. The policy memorandum refers to the possibility of technical assessors being appointed, and that is exactly what we would do in such a situation.

It should be borne in mind that the inquiry process is supposed to be a public process, so it is incumbent on any promoter to be able to explain to the public in terms that they will be able to understand—I am not belittling their approach in any way—whether a process has been properly followed. That is one of the objectives of making it a public process rather than a private process involving a panel of experts.

Michael McMahon: I have one more question, which follows on from what you have just said. One of the concerns that has been raised is the fact that although TIE Ltd, which was supposed to ensure that consultation was effective, claimed that it had consulted Lothian Buses, Lothian Buses said that it had never been consulted. Would that form the basis of concerns from your perspective? Do you think that the bill gives you the power to address such concerns?

James McCulloch: Let us say that I was dealing with that case. If I thought that the views of Lothian Buses were substantive in respect of the proposal, I would find out what those views were, even though the developer might not have approached the company.

Paul Martin: We are comparing the current process with the proposed process. Would not the convener of the private bill committee also be able to ask the question and seek that information?

James McCulloch: I imagine that the convener of the private bill committee would ask that sort of question.

Paul Martin: I have two questions that relate to that. Last week, we heard from a witness who was concerned about the formal atmosphere of the private bill committee compared with what they thought the independent reporters process would be like. How do you think the two compare?

James McCulloch: I heard a lawyer describe the private bill committee as a place where there is no scope for adversarial process. He was talking

to other lawyers and said, "Don't try it in front of the committee." Maybe the message has got through.

We want to ensure that the process that we use in the examination of objections best fits the nature of the issues that are raised. For example, when a particularly technical issue that requires deep probing is involved, it could be subject to an adversarial process, but when opinion is involved—for example when local residents want to make their views known and have strongly held opinions about a development and its impact on them—I and other people in the inquiry reporters unit would not see that as appropriate for adversarial examination. It is not necessary to have an advocate to cross-examine on that; it is necessary to understand better why the local residents hold the opinions they hold and what the parameters of those opinions are. That could be dealt with by a hearing, which is a structured discussion that is led by a reporter and subject to an agenda that is produced in advance.

When an issue is pretty straightforward and we can understand from an objector's written submission exactly what they are concerned about, we would deal with the matter simply on that basis. We might ask for further clarification from them, whether in writing or by asking questions, but the matter would be dealt with simply through an exchange of written submissions.

Paul Martin: I will get back to the human element. The witness was concerned that the parliamentary committee created quite a formal atmosphere and thought that the inquiry reporters process would be a much more informal alternative. My experience is different. What is your view?

James McCulloch: Planning inquiries, as currently processed, are pretty formal. The objective of planning reform is to get away from that and to move towards the kind of process that I have just been talking about, which is a hierarchical and hybrid approach that is tailored to the individual matters in dispute in each case.

Paul Martin: The witnesses referred to the fact that MSPs are not experts on the technical issues and cannot be advised on them. Would the reporters have an encyclopaedic knowledge of every subject that was raised, or would they seek to interrogate the issues, as MSPs have done?

James McCulloch: No, the reporters do not have an encyclopaedic knowledge. They have to understand exactly why a particular party holds a certain view. They would probe and ask questions or, if the matter were being dealt with adversarially, perhaps rely on someone else to ask the questions and then come in afterwards to ask the questions that had not been asked and still needed to be covered.

Paul Martin: Could the process that you describe not be simulated within the parliamentary process?

James McCulloch: As I understand it, private bill committees have found it extremely difficult to resource the process because MSPs have many other responsibilities to discharge, and that has caused a logjam in processing the bills that are currently before the Parliament, which is why we are advising private bill committees on the three bills that are currently being handled. We are not replacing the committees' consideration; we are advising them. The committees will then take a view, based on the report that we provide, on whether they need to take further evidence.

Ms Watt: I got the impression from evidence taken today on peer scrutiny that it seems to be about expecting experts to come forward voluntarily and give their views. Another argument is that objectors always feel that they are on the back foot because they are lay people and do not know the technical stuff. Calls have been made for objectors to be given technical and financial assistance before they appear at a public inquiry. Is that practical? Would such a step benefit the reporter when they come to make a decision?

James McCulloch: That issue has already been raised in the planning sphere. My understanding is that, in Scots law, legal aid may be available to objectors in some circumstances, but it is not generally available in practice. The important point about planning inquiries and inquiries that will be held under the new legislation is that they must be publicly accessible. I mean that in both a physical and an intellectual sense. The issues must be explained in a way that people can understand. The important point about the reporter—the independent person who conducts the examination—is that they are interested in the issues that are raised.

If an important issue is raised by an unrepresented group, it will not matter to the reporter that the group has not been able to provide a full technical assessment to underpin the argument. In inquiries, crucial issues are often raised by local people who do not necessarily realise that those could be the crunch issues that determine whether the scheme proceeds.

I can see why the idea of local residents being provided with technical assistance is attractive. In some major infrastructure projects in England and Wales, the developer has provided that resource and borne the expense on behalf of the community. That has happened in waste rather than in transport. In such situations, the developer has indicated that provided the objectors—who

obviously have different interests and concerns—are prepared to band together as a single group behind an individual spokesman, it will fund environmental analysis on their behalf. Those who conduct the analysis have been answerable to the group rather than to the developer. That has been quite successful, but it is not something that we would have any power or locus to suggest that a developer would have to do; it is just an enlightened approach that has been taken in some cases.

Ms Watt: Could that be incorporated in a bill?

James McCulloch: You can do anything you want to in a bill, provided you are prepared to do so. That is really a matter for ministers—not me—because it is a policy issue.

16:30

Ms Watt: We hear of objections to proposed projects. As a community councillor, one goes through all planning applications. Often, there is a substantial number of letters in support of a project. I know you receive such letters, but do you feel that you get a balanced view in a public inquiry? In my experience, those in favour of a project feel a bit intimidated about presenting their views in front of a load of vociferous objectors. How do you handle that?

James McCulloch: I understand exactly what you mean. I have seen it in waste water treatment—what we used to call sewage works—cases, in which those who want better sewage treatment are unlikely to present that argument if a vocal minority, or possibly majority, does not want it to happen. That is the case in some parts of Scotland. We cannot force anyone to appear at an inquiry—that is a matter of choice—but the present arrangements for planning inquiries and the arrangements that would be used under the bill allow any person who wants to make their views known and to have them taken into account to do so without having to appear. They can put in a written submission, which will be considered.

You said that you have come across several instances when there were written submissions in support of a project, but the only evidence that was put forward on behalf of the community was against it. At the end of the day, a balanced judgment has to be reached on the nature of the representations, including those for and against. Obviously, the developer is putting forward a cogent case in favour of the development. That is his responsibility. The important point is the balance.

Fergus Ewing: I want to ask about the procedure for inquiries and hearings. Section 9 of the bill says that ministers

"may cause a public local inquiry to be held".

Will you explain the ways in which that can be done?

James McCulloch: The minister would indicate to us, through a unit that is to be set up to deal with authorisations under the bill, that objections had been received and that they required to be examined. We would be asked to provide resources to do so. My expectation is that we will have some kind of dialogue with that unit about the potential workload over the forthcoming year or 15 to 18 months. We would expect to know what was coming through the system and to relate it to our likely resources in the light of work that we have to do on planning appeal inquiries and so on.

We have not had a dialogue with the responsible parts of the Executive about how the instructions on how such a case should be handled might be put to us. In planning law, there are situations when ministers indicate to us the matters on which they particularly wish to be informed for the purposes of their consideration. Similarly, in this case, we may be told that there are particular areas that ministers want examined in detail, for example adversarial areas. It may be left to us to decide whether other areas should be dealt with by hearing or by written submissions. On the other hand, we may get no instructions whatever and be told simply to examine the objections. It is then up to us, or the allocated reporter, to decide whether the matters are dealt with formally and adversarily or in a less formal process.

Fergus Ewing: That is to be determined under section 10—regulations are to be made to determine the procedure to be followed.

Will you help me with something that I do not understand and which I raised at a previous evidence session? An inquiry was held into the M74 extension project and, as Mr Rumbles said, the reporter made a recommendation but the minister took the opposite view. That inquiry and inquiries under the bill have more than one function: their remit is to consider not simply whether a scheme should proceed, but how it would proceed, how objections would be met and how compensation claims would be met. An inquiry has multiple functions.

I was slightly puzzled about the M74 process, which might be part of the 5 per cent that you mentioned. Surely the Executive should have said to the reporter—perhaps you can tell me whether it did—that it wanted an M74 extension, because it was a national project. The Executive should have said, "We have a mandate. We said that we would give people an M74 extension, so there's going to be one. Your job, Mr Reporter, is to decide not whether there should be one, but how best to deliver it, taking into account all the relevant circumstances." Was the reporter given such a remit?

In general, would that be a reasonable way to approach a national transport inquiry? The job of the reporter should not be confused with that of being the ultimate arbiter of a national project. The reporter's role should be made clear, to avoid the reporter taking the flak for matters that may not be his responsibility.

James McCulloch: My personal view is that it is never appropriate for a civil servant to determine the national interest. Ultimately, that is the job of ministers, although their decision might be based on civil servants' recommendations.

The reporter's recommendation on the M74 extension was slightly less stark. His principal recommendation was against the project, but he also said, "If you do not propose to accept that recommendation, why?"

Fergus Ewing: What was the reporter's remit? Did it include the fact that the M74 extension should proceed?

James McCulloch: I understand that the clear policy base was explained to the inquiry in several different documents, but I do not think that the remit was in the terms that you suggested.

Fergus Ewing: Do you accept that that creates a fundamental confusion among the public? The public thought that the inquiry's purpose was to consider whether the M74 extension should proceed, but my reading of the papers suggests that that was never the purpose. The M74 extension was to happen; it was just a question of where and how. I am not asking you to make a value judgment, but do you accept that unless the remit is clear, confusion will almost inevitably result, as will an unsatisfactory situation in which civil servants might be blamed for matters for which other people should be blamed?

James McCulloch: You anticipated what I planned to say. The scenario in which the bill will operate is that the second national planning framework will be in place. You will be aware that the bill contains provisions on the national planning framework. In the future, I expect a scheme such as the M74 extension, which was an established plank of ministerial policy, to appear in the national planning framework, which Parliament will scrutinise. That would commit that element of the process—the need for the project would be established. The examination of objections that would be mounted to such a scheme would consider whether the alignment was correct, whether environmental mitigation was appropriate and whether land acquisition should proceed as proposed, as you said, but it would not scrutinise whether the project was needed.

Fergus Ewing: I will make a final plea. I gather that one procedure that can be used to determine an application on appeal is a hybrid between a full public inquiry and written submissions—an informal hearing without lawyers, expense or the time commitment. In a local case in Dalfaber in my constituency, objectors did not have the chance to have such a hearing. The arrangement was stitched up by the developer and the national park authority, and the inquiry reporters unit seemed unwilling to engage objectors or even to give them information about how the matter would be dealt with or about the right to a hybrid hearing.

A hybrid hearing without the cost, the lawyers or the adversarial approach is a good way to operate. It allows people to feel that they have at least been listened to, particularly if a site visit has been made. I hope that your colleagues will think about that, because it left quite a bitter taste in the mouth.

James McCulloch: I am sorry that that happened. However, I know—because I held one—that hearings in your constituency have worked.

Fergus Ewing: I know. I have given evidence at one or two of them.

James McCulloch: Right.

Mike Rumbles: Fergus Ewing's comments have muddied the water for me. I thought that the reporters unit had a clear remit and that it was indeed independent—that it looked at the pros and cons of an appeal or whatever and made a recommendation to the minister—but the bill introduces a new scheme that will cover anything in the national planning framework, which will have been approved by Parliament. Is that not quite a different kettle of fish?

James McCulloch: Yes, and it would stray—if I can use that expression—into planning. Although some schemes in the national planning framework will require planning authorisation instead of authorisation under transport and works legislation, they will be dealt with in exactly the same way.

David McLetchie: My question is supplementary to that and perhaps pins a tail on this discussion. If the determination of need is made in the context of the national planning framework—which means that, in a sense, a project is deemed to be needed—will people who come along to one of the inquiries envisaged by the bill to lodge objections to a scheme's principles and, indeed, the wider policy decisions be ruled out of order and told, "Go away—your evidence isn't pertinent and doesn't interest us"?

James McCulloch: That is a rather pejorative way of putting it, but that is how the system will operate. Because a project has been included in the national planning framework, ministers will believe that they have a mandate to take it

forward. The question—at least for some of them—is not whether, but where and how, that will be done.

David McLetchie: But you accept that in the present system the principles behind a project and its practicalities can end up being confused?

James McCulloch: That can happen.

David McLetchie: Certainly the public understand that. In that case, do you agree that, with particular reference to the national planning framework, we must ensure that the Planning etc (Scotland) Bill, which the Parliament is currently considering, and all the subsidiary provisions and subordinate legislation that will flow from it fit with this bill? After all, if the principles and practicalities of a project are to be clearly identified and if the public concerns expressed by our first panel of witnesses, who objected to the Edinburgh tram project, are to be dealt with, the mechanisms for public consultation, inquiries or whatever on the national planning framework must work correctly. Surely that process of front-loading must take place before the mechanism set out in the Transport and Works (Scotland) Bill can come into play. Is that a fair assessment?

James McCulloch: Yes, although we should bear in mind that there is probably a continuum that runs from commitments in political manifestos through to the justification for particular schemes. By and large, these are flagship projects. They are not schemes of major, but essentially local, significance; they are national projects that are pursued in the national interest. As a result, the justification for them must be clear and up front.

The Convener: That brings us to the end of our questions. Thank you for your evidence, which has been useful to our consideration of the bill.

James McCulloch: I appreciate that.

Subordinate Legislation

Road Traffic (Permitted Parking Area and Special Parking Area) (City of Glasgow, Perth and Kinross Council, Aberdeen City Council, Dundee City Council and South Lanarkshire Council) Designation Amendment Order 2006 (SSI 2006/446)

16:44

The Convener: Neither the Subordinate Legislation Committee nor any member has raised any points on this amendment order, and no motions to annul have been lodged. Do we agree that we have nothing to report on it?

Members *indicated agreement*.

The Convener: We will now move into private session.

16:44

Meeting continued in private until 16:45.

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