ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 18 March 2009

Session 3

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

CONTENTS

Wednesday 18 March 2009

ECONOMY, ENERGY AND TOURISM COMMITTEE
10th Meeting 2009, Session 3

CONVENER

*Iain Smith (North East Fife) (LD)

DEPUTY CONVENER

*Rob Gibson (Highlands and Islands) (SNP)

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)
*Gavin Brown (Lothians) (Con)
*Christopher Harvie (Mid Scotland and Fife) (SNP)
Marilyn Livingstone (Kirkcaldy) (Lab)
*Lewis Macdonald (Aberdeen Central) (Lab)
*Stuart McMillan (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Nigel Don (North East Scotland) (SNP)
Alex Johnstone (North East Scotland) (Con)
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)
*David Whitton (Strathkelvin and Bearsden) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Nigel Don (North East Scotland) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Dave Gorman (Scottish Environment Protection Agency)
Nicholas Gubbins (Community Energy Scotland)
Dr Keith MacLean (Scottish and Southern Energy)
Alasdair MacLeod (Infinis Ltd)
Dr Tim Norman (Crown Estate)
Jason Ormiston (Scottish Renewables)
Bob Stewart (Scottish Society of Directors of Planning)
John Thomson (Scottish Natural Heritage)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Katy Orr

ASSISTANT CLERK

Gail Grant

LOCATION

Committee Room 5

Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 18 March 2009

[THE CONVENER *opened the meeting in private at 09:39*]

10:00

Meeting continued in public.

Energy Inquiry

The Convener (Iain Smith): I welcome everyone to the public part of the 10th meeting in 2009 of the Economy, Energy and Tourism Committee. Nigel Don is attending again today as a guest member. Apologies have been received from Marilyn Livingstone—David Whitton will appear as her substitute at some point during the meeting.

Agenda item 2 is our inquiry into the determination and delivery of Scotland's energy future. I see some familiar faces at the other end of the table. Our witnesses today will talk to us about the ways in which the planning system affects development in the energy sector. The first panel will approach that from the developers' perspective and the second panel will approach it from the perspective of the regulatory authorities.

As usual, I ask the panel to say who they are and where they are from, after which we will begin our questions.

Nicholas Gubbins (Community Energy Scotland): I am the chief executive of Community Energy Scotland, which is a Scottish charity that is dedicated to assisting community organisations throughout Scotland in strengthening resilience through sustainable energy development. We have been involved in a wide range of community energy projects, including somewhat larger-scale projects such as community wind farm developments, all of which come right into the planning system. To date, we have been involved in 10 projects that have secured planning consent, all of which are wind projects of less than 5MW. Their passage through the planning system has been interesting, so that is what I will comment on today.

Jason Ormiston (Scottish Renewables): I am the chief executive of Scottish Renewables, which is the renewable energy trade association for Scotland. I am also the co-chair of the forum for renewable energy development in Scotland—FREDS for short. I thank the committee for giving me the opportunity today to speak about planning, which is an important issue for our industry.

Dr Keith MacLean (Scottish and Southern Energy): I am the head of policy and public affairs at Scottish and Southern Energy. We have a great interest in the development both of generation projects and of projects that support infrastructure. I am the chair of a sub-group of FREDS that considers planning and consent issues for energy projects. The group has made a number of proposals to the Government and will pursue further work in the area shortly.

Alasdair MacLeod (Infinis Ltd): I am the head of development at Infinis Ltd. We produce renewable energy primarily from landfill gas generation, but we are expanding into biomass and onshore wind in Scotland and down in England. My job is to identify sites for development, to assess the feasibility of developments, to engage with the community, to navigate projects through the planning system and to obtain planning permission. It is quite straightforward. I am a planner by profession and I have experience in both the public and private sectors. I thank the committee for inviting me here today.

The Convener: Thank you. I will start with a fairly open and general question to get the discussion going. We are moving slowly towards implementation of the Planning etc (Scotland) Act 2006. Have you seen any significant changes in the operation of the planning system? Are the planning reforms improving the situation—or do you expect them to do so—for people who are seeking to develop renewable energy projects? If they are not, what are the continuing problems?

Jason Ormiston: We are confident that the reforms that will come through the 2006 act will make positive changes to the planning system and give the industry a level of certainty that it has not had in the past, but which it needs. Those reforms have not started to feed through and so have not yet made a significant impact. Much of the secondary legislation that will derive from the 2006 act has still to be produced, so we are also waiting for that to have an impact on the planning system.

The general intention is to give the planning system more confidence, to allow us to see the planning system as an enabler of good development and to achieve effective community engagement. Several non-statutory reforms, such as planning advice note 81 on community engagement, make relationships with communities a key part of the planning reforms. The renewables industry is keen for all those reforms to work.

Dr MacLean: I agree with Jason Ormiston that much has still to be done to fully implement the 2006 act. It is true that what matters is not just the legislation, but its application and the willingness to make decisions based on that legislation. More willingness has recently been shown to make decisions—positive and negative. As a reaction to the FREDS recommendations on the planning system, the Government introduced for itself a target to make determinations on applications under section 36 of the Electricity Act 1989 within nine months. Performance towards achieving that target has been mixed, but movement is definitely in the right direction.

It is important to emphasise that, no matter how good the legislation and surrounding regulation are, those who are involved in the planning system—planners and statutory consultees—need to be willing to make decisions. It is also important that they are resourced to a level that allows them to make the necessary decisions in the requisite timescales.

Alasdair MacLeod: I echo those comments. It is still early days for major change to have taken place. One success of the planning system in facilitating renewables has been strong national policy advice, initially through national planning policy guideline 6 and subsequently through Scottish planning policy 6. A review of the planning policy guidance system has been proposed, with the aim of streamlining it. In general, that is welcome.

We should look carefully at the strength of national guidance on renewables. A case might exist for having separate guidance on renewables, to ensure that the national direction is maintained and understood. That is one reform that is being consulted on.

Nicholas Gubbins: It is too early to tell what the impact of the 2006 act has been on community projects. However, we can step back a pace and consider the system, in which many opportunities exist to delay the application process. Not all those opportunities relate to the statutory framework or even to guidelines or advice.

We have been involved in projects that were dealt with by a wide range of local authority planning departments. Across the piece, we have found that approaches to an issue, such as the processing of a section 75 planning agreement, can vary significantly. Sometimes, we are hard pressed to discern the cause of that variation, which is found only when we dig deep into how planning authorities operate and into the influences on them.

The statutory context is important and will make a difference, but it is a mistake to think that it will solve all the problems that the projects that we are involved in face.

Rob Gibson (Highlands and Islands) (SNP): The committee has heard evidence that there is a critical shortage of planners in some parts of the country. Today, Highland Council is talking about making staff cuts in its planning department in order to balance its books, although major developments are taking place in that area. How prevalent is that problem in local authorities throughout Scotland?

Alasdair MacLeod: I have found that to be the case with almost every local authority whose representatives I have met. Everybody is concerned about timescales and the very limited resources that are available for facilitating engagement and for assessing and analysing issues that come up around renewables projects.

A useful parallel is the new legislation's emphasis on pre-application consultation. The renewables industry is well used to engaging with communities and consultees. The difficulty lies in engaging with local authority staff, who have such heavy workloads that it is difficult to arrange meetings to discuss specific issues in detail. Once all the information is submitted to local authorities—including the application and all the supporting documents—they take quite a bit of time to go through them and to follow the various procedures. They also have to deal with numerous applications. Resourcing is a key element of the delays that we are experiencing with consents coming through.

Dr MacLean: It is worth pointing out that, about three years ago, amendments that increased fees significantly were made to the fee structure for section 36 and section 37 determinations under the Electricity Act 1989. The objective was to channel funds into local authorities so that they could fund their planning departments to deal with the increase in applications coming through the system.

It might be worth checking this with the planners in your second panel of witnesses today: the anecdotal evidence that we got back from councils that we were in touch with was that those moneys have tended to end up in a black hole rather than being specifically directed at employing planners. The point about employment levels is very important: if we can take advantage of the opportunities for investment in renewable energy and in energy infrastructure as a whole, that will provide a means of creating economic and employment benefit. It seems to be counterintuitive to cut back on employment, thus creating an even bigger bottleneck in the system. The system actually needs to be widened out to allow projects to come through more quickly, so that we can gain economic and employment benefit at this important and difficult time.

Christopher Harvie (Mid Scotland and Fife) (SNP): At the moment, we are faced with a collapse in housing.

The Convener: In housing applications, I think you mean.

Christopher Harvie: What?

The Convener: "Collapse in housing" has another connotation.

Christopher Harvie: Yes—perhaps we could add in a collapse in housing as a general proposition, too.

Will that collapse not mitigate the pressure on local authority planners, at least for a time?

Jason Ormiston: There might be an easing of the pressure on planning departments, but the key issue perhaps lies around the skills that are required to assess renewable energy planning applications. The question is whether or not planners have the skills to address the many issues that arise with proposals for particular renewable energy projects. In the scheme of things, planning departments might be having a slightly less pressured time, but the rate of planning applications for renewables projects is unlikely to slow down.

Rob Gibson: I will go back to the point about the allocation of more resources. Have you noticed that there are more resources in councils since the Planning etc (Scotland) Act 2006 was passed? Keith MacLean suggested that the increase was coming only from the increased fee structure. The resources have been allocated to councils to spend, but are not getting to the planning departments.

Dr MacLean: I would correct that. We have not seen an increase on the basis of the fee structure, nor on the basis of any change to planning legislation.

10:15

Rob Gibson: Does Nicholas Gubbins want to comment?

Nicholas Gubbins: We have not seen any effects yet. Community Energy Scotland has been involved in a number of projects in which delays have meant that an application has not been determined within the statutory period. There have been systematic and long delays. In each case, however, the groups involved have been unwilling to appeal, simply because they know that there are not planners who are able to deal with the cases—the Western Isles and Argyll are two areas that come immediately to mind. The groups are in a difficult position. They know that they are within their rights to appeal about the time that the determination of projects is taking, but appealing is the last thing they want to do, because they know that appealing will not make the determination any better.

Jason Ormiston: There is the assessment of planning applications, but there is also the development of local plans and associated supplementary planning guidance. The introduction of SPP 6 in March 2007 required local authorities to update their SPG on their renewables policies, but we have not yet seen that happening to any significant degree. However, it will have to happen, because SPP 6 says that it must. We are concerned that local authorities are not equipped to develop the kind of policies that will help in meeting the targets for 2020.

Dr MacLean: Another point is worth underlining. FREDS recommended that we remove all the bottlenecks. The combination of the requirements of the Planning etc (Scotland) Act 2006 for ever more pre-application consultation, and the volume of work, have given rise to concerns that the statutory consultees, for whom the additional fees are not applicable, would also have resourcing problems in respect of engaging early to do all the required pre-application work. Resourcing considerations must also apply to the statutory consultees, or we will simply shift the bottleneck.

Alasdair MacLeod: Much attention has rightly been focused on pre-application consultation, but when we talk about bottlenecks, we also have to consider post-application engagement between developers and local authorities. I think that developers are willing to take more of a lead to provide briefing sessions, to facilitate early site visits and to try to analyse the issues that have to be assessed by local authorities.

In appeals, we are now encouraged to reach a statement of common ground between local authorities and developers. That helps in reducing the number of issues to be considered at an appeal or a public inquiry: rather than consider 20 issues, we can quickly get down to two or three because an agreed position has been reached on all the others. That idea could be transferred to the application stage, which would assist the local authorities and speed up the decision-making process.

The Convener: That is an interesting point.

The present rules on what local authority members and members of planning committees can and cannot do in relation to planning matters are fairly restrictive. With the new legislation, should the guidance be changed to make it easier for councillors to get involved constructively in pre-application and post-application discussions? At the moment, many councillors feel that they cannot engage with developers because of the restrictions.

Alasdair MacLeod: I would always encourage discussions with elected members, with a senior official present. The type of applications that are being promoted cover a huge range of environmental and technical issues, so if people can gain an early understanding of those issues, it will help to speed up the whole process.

It will be important to encourage involvement between planning officials and developers. Much attention focuses on consultation before the application is lodged, but such consultation should continue throughout the application process.

Stuart McMillan (West of Scotland) (SNP): I have a few questions. First, does the panel have an estimate of how many planners in Scotland have expertise in renewables?

Secondly, could planning authorities work more closely with the planners who have that expertise and therefore share the costs and the burden?

Thirdly—perhaps you can clarify an earlier point—the panel seems to be saying that there should be more planners who have expertise in renewables. Is that correct?

Dr MacLean: Yes. Your second question contains a sound suggestion about how to manage the projects. There have been discussions in various fora about the idea of a task force or a joint body involving central Government, local government and the development industry, which would provide a central base for knowledge, and would pull together best practice and make it available to the planning authorities.

An awful lot of specialist issues come up, and it is unrealistic to expect every planning authority to develop the same high level of expertise in every area. We need to find a common mechanism to provide that. The idea is that it would have two roles: an advisory role and a sort of auditing role. In order to develop best practice on both sides, such a body would consider not only the performance of different local authorities in relation to the determination process, but the quality of the applications that are being put through the system. That idea builds on Stuart McMillan's suggestion, although the discussions are at a relatively early stage.

Jason Ormiston: I can try to answer—or, rather, not answer—the first question. We do not have the detailed figures that you are looking for. It would be useful to do an audit, although I do not know how easy that would be. You might have to ask Bob Stewart, in the next panel, how to go about that.

There is enough evidence from our members at Scottish Renewables to show that the planning authorities and the statutory consultees sometimes lack the skills to assess quickly and with confidence the proposals in front of them. A skills audit would test that hypothesis, and I am confident that the answer that came out would be that there is a need to invest in a number of areas.

Dr MacLean: We have talked about planning officials, but many final decisions are made by elected members, so guidance and assistance for them in carrying out that important role is essential. Otherwise, we do all of the work with the officials and still end up with the difficulties that we have in the decisions.

Lewis Macdonald (Aberdeen Central) (Lab): In his first response, Keith MacLean commented on the nine-month target that the Government set recently in respect of decisions, and referred to the mixed bag so far. Will you put a little more meat on the bones of that, and what we have seen so far in terms of speedy decision making?

Dr MacLean: I can give a rough outline. The last I heard, five or six projects had gone in since that commitment was made, and one or two were on track to be determined within that period. The remainder were expected to take longer, but at the time—admittedly, it was some months ago—it was expected that they would still be accelerated in relation to the overall average. I would not wish you to take that as a definitive answer on behalf of the consenting department, but that is the indication that we were given about six months ago.

Jason Ormiston: The situation has not changed. Keith MacLean's description is accurate.

Lewis Macdonald: That is helpful. Perhaps we can pursue that with the Government, convener, and ascertain what the up-to-date position is.

We would be interested to hear the witnesses' views on another couple of areas of central Government responsibility. The process for approving the Beauly to Denny transmission line has taken a long time and will apparently not be completed in the foreseeable future. However, the good news is that the national planning framework indicated that future grid reinforcements would follow a different route. Will the approval process for future grid reinforcements meet the needs that the Beauly to Denny line experience has highlighted?

Dr MacLean: A project's being in the national planning framework—as we have discussed at previous meetings—is extremely important because it creates the basis for much speedier decisions. The more that is included as policy in advance, and is not re-challenged during the consent process or any subsequent public inquiry—for example, on the need for a project—the more the process is speeded up. The big lesson that was learned, and which is being applied, is that we should limit the focus of public

inquiries to material planning considerations that are still in dispute at the end of the process. Alasdair MacLeod suggested that there should be a list of what has been agreed with the planning authorities. If that were the case, a public inquiry would consider only matters that were not on the agreed list and which remain in dispute, and would not re-open every possible issue, including the needs case, as has happened in a number of cases. I think the Eishken wind farm application in the Western Isles went through that sort of process. Focusing an inquiry on one issue is definitely the way forward.

Lewis Macdonald: Alasdair MacLeod referred in an earlier answer to the proposal to do things differently by merging planning notes and planning guidance. I am interested in any further thoughts that he may have on that, and in other witnesses' views on it. We are aware that local councillors have not implemented national policy in respect of many applications. I suspect that that is partly because councillors are not clear that something is a national policy that they are required to implement in their decisions, which are ultimately overturned. Does the proposal to merge planning notes with guidance pose a threat to Government's ability to explain national policy to local authorities and ensure that they implement it?

Alasdair MacLeod: As I said previously, one of the successes of renewables in Scotland is the strength of the national policy. If national policy notes are streamlined, the danger is that we will lose much of the detail, which provides direction and certainty to developers, statutory consultees and local authorities. That detail also provides direction to local plan policies that are put into spatial frameworks and gives certainty for the planning system and investment. We should recognise what the detail has delivered and be careful not to lose too much through a desire to streamline policy guidance. There is a strong case for making an exception for renewables because delivery of renewables is important for addressing climate change and security of supply. There is a strong national need for that, so separate policy guidance should be part of the support mechanism.

10:30

Nicholas Gubbins: It is an excellent idea to streamline the supply of policy and to rationalise wherever possible. Of course, the key thing is how a policy is reinforced at the other end. It is not sufficient simply to present a policy, and its reinforcement often rests on the skills and capabilities of the professional staff in local authorities. That brings us back to the point that we kicked off with: it is important to bear in mind the delivery and reinforcement process in drafting the guidance.

Jason Ormiston: There is a suite of planning policies at the minute. There are about 500 or 600 pages' worth of planning policy that the Government wants to condense into about 50 or 60 pages, so you can see the difficulty that the Government faces. The detail that Alasdair MacLeod is talking about allows less room for interpretation of policy. If policy is summarised in the way that is proposed, there will be more room for interpretation, which means that it will be easier for those who make decisions—political decisions, perhaps—to take an alternative view that is not in the spirit of the policy. Our big concern is that the key support behind renewables and SPP 6 will be lost because of the opportunity to interpret things in many different ways.

The proof of the pudding will be in the quality of the supplementary planning guidance that is published in the next year or so. It is important that the Scottish Government gets behind its policy and shows commitment to it. The litmus test of Government and political support for renewables in Scotland will be in ensuring that the planning policy works.

Lewis Macdonald: If the comments that have been made by witnesses are correct, the risk is that, if the detail is taken away, those authorities or consultees that are not actively supportive of a national policy at the moment will have even more room not to be supportive of a national policy.

Jason Ormiston: Indeed. A lot of the detail might go into planning advice notes, and I have heard planners describe that as only advice that they do not have to take. We are concerned that the Government is taking a national policy and putting it into advice that may not be followed by the planning authorities or politicians at the local authority level.

Lewis Macdonald: Has the proposition that Alasdair MacLeod has raised—of taking a separate or distinct approach to renewable energy developments—been supported widely in responses to consultation?

Jason Ormiston: I will have to ask my members about that. That issue has not yet been raised with us.

Lewis Macdonald: Okay. That is helpful.

The Convener: I will ask one small follow-up question before I bring in Gavin Brown. The 2006 act requires changes to the local plan framework in that there will be structure plans only for the city regions. That means that vast areas of the country will no longer be covered by a structure plan, although many of those areas contain the best potential sites for renewable energy

developments. Are you concerned that there will be no structure plan guidance for the development of renewables but only local plans, which are site specific rather than about policy?

Jason Ormiston: The local authorities' response to that change has been to continue to work together on spatial planning for wind energy, in particular, and for biomass. It is good to promote such working together, but I am not sure whether that requires a structure plan behind it—I would need to take advice from people such as Alasdair MacLeod. Bob Stewart might also have a view and might be able to give a more definitive answer.

Alasdair MacLeod: It is early days yet. We have yet to see just how the local plans are going to address strategic issues across local authority boundaries. There is a long history of having strategic objectives and more detailed policies in a plan-based approach. I do not think that that will be lost, but we have yet to see how it will be translated into the new local development plans.

Dr MacLean: We must be wary because we work within a plan-based approach. For instance, the national planning framework is itself only a material planning consideration for local authorities. The intention is that the contents of the NPF will be adopted in local plans as much as they can be in order for them to have the primacy in the planning system that they need. That is an issue not just for Scotland but for the UK in the planning reform that it is currently going through.

It is fine to have a national planning framework and national policy statements but, until they are properly adopted into local, structure and spatial plans, they will not have the necessary primacy in the system for the decisions more naturally to follow on from them.

Gavin Brown (Lothians) (Con): Last October, the Cabinet Secretary for Finance and Sustainable Growth made an announcement about Government agencies that is relevant to planning. He said that Government agencies would focus increasingly on matters of genuine national interest and that they would be better aligned. Five months on from that statement, to what extent has that happened?

Jason Ormiston: Alasdair MacLeod partly answered that question earlier when he talked about the common statements of agreement between developers and local authorities in appeals and public inquiries, which suggest that there is a focus on the issues of concern.

We also know that Scottish Natural Heritage is thinking about the way that it provides advice to planners. It is considering an approach whereby, in circumstances in which there is a legal designation, it will provide advice along the lines of an objection or support, but when there is not a legal designation or protection for particular sites, it will provide clear, strong advice that will enable a planner to come to a clear conclusion, based on the evidence that is before them. There is a move towards such a principle, which is a sensible way forward.

Gavin Brown: When planning came up during our tourism inquiry, we heard mention of SNH, the Scottish Environment Protection Agency and Scottish Water. Do you think that the alignment that we are talking about is happening across the board?

Dr MacLean: There is movement in the right direction. Yesterday, I attended an energy seminar run by SEPA, which amounted to its first ever engagement with representatives from industry, academia and other areas. We are aware of similar changes and developments in SNH, as it tries to adapt its role to the new situation that was outlined by Mr Swinney.

There is evidence that the process is starting, but there is a long way to go before the initiatives from the management structures in the organisations feed down into the individual groups that deal with the day-to-day applications. Councils probably also have some way to go and, as I said before, the role of the elected members is key in that regard.

Nicholas Gubbins: It is worth remembering that those bodies have statutory remits. Their processes are coming together a bit more than previously, but that will happen only to a certain extent before it cannot go any further because of what the bodies perceive to be their statutory purpose.

Dr MacLean: The Climate Change (Scotland) Bill places a duty on agencies and local authorities to engage in climate change mitigation and adaptation. That is naturally aligned to what we are discussing.

Alasdair MacLeod: Through the Scottish Renewables Forum, I and others met SNH officers to discuss the form of SNH's responses and address how they could better define them so that they were more detailed rather than simply overarching objections. The discussion was positive, and we had a good debate around how each side of the development process found each other's responses.

The difficulty lies with the local authorities. It is easier for SNH to reach a view on natural heritage or landscape issues and for SEPA to reach a view on hydrological or potential pollution issues because their scopes are narrow. The planners in local authorities must balance absolutely everything, and the scope of their interest leads to

the problems. Information must be assimilated and analysed.

Christopher Harvie: Has any extended study been made of planning histories in Denmark or northern Germany? The notion of having large wind farms situated in remote areas seems to be characteristic of those places, and one would have thought that a lot of ground rules could be taken from that experience.

Dr MacLean: I think that there have been various looks at the processes that have been adopted in other countries. The planning systems and the local attitudes to planning are certainly different in Denmark and Germany—that relates as much to the populations in those places as to their structures.

A system whose use is fairly widespread in Europe—Germany certainly uses it, and I think that Denmark does, too—has been considered recently and is worthy of consideration. Business rates money from local development and particularly from renewable development projects is channelled directly into the local authorities as opposed to going into a central pot. That approach gives the local authority a stake in the outcome and more direct benefits, which it can see, for the entire area. That is not achieved with community benefit moneys, which tend to be more focused and whose scope is probably smaller than the magnitude of funding that can be achieved through business rates.

Nicholas Gubbins: I understand that there was initially a very favourable financial and regulatory regime in Denmark that supported fairly small-scale local developments in which many people had invested. Those developments were very popular, but things changed significantly with a change of Government. There was a move away from that scale of development, and things became harder as a consequence.

Rob Gibson: I want to follow up on the point about community benefit funds. Are the community benefit funds in Germany and Denmark bigger than they are here? Such funds here represent small change in their ability to fund better infrastructure and to fund councils to develop and nurture new kinds of energy.

Dr MacLean: My understanding is that, because the money comes through the business rates in those places, there are significantly greater sums of money overall than would normally be accrued through the more targeted community benefit funds that we have here.

Christopher Harvie: That is the Gewerbesteuer.

Dr MacLean: That is right.

Lewis Macdonald: I have a couple of questions about the process and how it can be or is being improved.

First, the Confederation of British Industry has suggested that there should be a fast-track application process for energy applications. Is that a practical proposition? Is it compatible with a planning system that allows other interests to be represented? Secondly, an announcement was made recently about general permitted development rights at the micro scale, but it covered only some of the technologies. What are the panel's views on those matters?

10:45

Jason Ormiston: On a fast-track process, obviously we would like energy applications to be dealt with in a more timely fashion. At the local authority level, it takes about a year on average to get a determination—which shows that there is an issue, given that the statutory period is four months. I acknowledge that complex engineering exercises are involved, but nevertheless we think that a year is too long. At the section 36 level, the period is a bit longer as the projects are bigger, but we hope that the nine-month target will help.

Although developing renewable energy is a nationally important exercise, I would prefer the whole planning system to gear up to responding in a timely fashion to all applications. I could make a strong case for special treatment for energy applications, but I wonder whether that would gain much currency across Scottish civic society, so it is not a point that I would choose to press. Members of Scottish Renewables might shoot me for saying that, but it might be the sensible position to adopt.

We have talked about general permitted development rights before, and we are disappointed with the outcome of the Scottish Government's recent work on the matter. Although we welcome the fact that GPDR has been extended to the flues for biomass stoves and to solar panels, we struggle to understand and accept why it has not been extended to air-source heat pumps and micro wind generation.

The Scottish Government is committed to proposing a solution to the problem, but we have yet to see the project brief from it or research on the issues with those two technologies, which involve their potential noise impact. If the Scottish Government wants to have something in place by the end of the year, which is what we would like to see and what is needed for the sector—in particular in relation to tackling fuel poverty and delivering renewable heat targets through air-source heat pumps—there needs to be some urgency, which I am afraid I do not see.

Dr MacLean: It is worth widening the issue out a bit. I agree with Jason Ormiston that, ultimately, we want a planning system that is fit for purpose and ensures that timely decisions are made on any developments. It is clear that we might be able to argue that climate change mitigation and adaptation projects have a particular urgency, but the other point is that there must be clarity for investors throughout the supply chain that Scotland is a good place to do business.

In various other evidence sessions, we have covered the issues around onshore wind. We have not developed a significant supply chain in support of onshore wind. A big problem has been that companies such as mine have not had a stable number of projects coming through to enable us to underwrite framework contracts with suppliers and allow them the clarity to make investment decisions in Scotland.

We should give home advantage to the supply chains that could be developed in Scotland in equipment such as air-source heat pumps. The application in Scotland is great. We should send out a message to the manufacturers that we are desperate to put those things in place and that, as there will be an enormous opportunity for air-source heat pumps throughout the world, we should start in Scotland and build up a supply chain here. Instead, we are sending out a message that we have to wait a year until we perhaps do something—companies will not wait for that.

Companies such as mine will have to find sources for equipment and, if it comes from China or somewhere else, so be it. The planning system should facilitate developments, and we should be seen as the place to do business. Instead, this is another example that is confirming our reputation as somewhere that is a bit unpredictable and not really conducive to development.

Lewis Macdonald: Is the boundary right between the applications that are determined locally and those that are determined by central Government? Are 5MW for hydro and 50MW for wind the right figures?

Dr MacLean: There is certainly a case to be made on hydro for revisiting the level at which a development is referred to central Government. One conclusion of the FREDS work was that it should not matter. We should have a system for large projects and a system for small projects and both should work equally well. We should not have a system whereby people try to scope their projects at 51.1MW or at 49.9MW to ensure that a better decision is made. That should not be part of the equation.

Alasdair MacLeod: Some local authorities provide a fast-tracking facility for applications that will provide economic benefit, so fast-tracking is possible, but a more likely solution would be an improvement in processing arrangements. Developers typically spend one and a half to two and a half years working on a project and have a huge amount of knowledge of it. All that information is sent to the planning departments, which then have to start from scratch. There should be mechanisms to enable closer working to build up knowledge of a project, which would facilitate better analysis.

Nicholas Gubbins: I support Jason Ormiston's view of the difficulty in having a specialised, fast-tracking approach. One thing that sticks in my mind is a comment that we received from a representative of a group that we have worked with. He felt that the whole process had been objector led, that the delays had been triggered by objectors who were seeking further extensions to enable them to submit further, more qualified objections, and that the process trailed behind that.

We have also observed, within the same local authority, exactly the same treatment being given to a commercial project to which 50 objections were received and a community project to which no objections were received. In fact, the community project took slightly longer to progress. From our perspective, that is the nub of the issue of whether applications should be fast-tracked: if there were to be any fast-tracking, I would immediately look at the volume of objections to or concerns about a project.

Rob Gibson: Future challenges to the planning system are posed by the development and deployment of new technologies such as wave power and the roll-out of offshore wind power. Will the planning system be able to support and sustain the deployment of such technologies?

Dr MacLean: In the marine environment, we are seeing the development of new legislation that should create a simpler process than the one that we had in the past, which involved multiple pieces of legislation, different Government departments and reserved and devolved powers. The opportunity is there, but I reserve judgment at the moment about whether the legislation is moving in the right direction.

That throws up one of the difficult balancing acts that everyone who is involved in renewables developments faces between what we should be doing to deal with climate change and what we need to do to maintain sensible levels of conservation and environmental protection. It is important that we find a better way than we have at the moment of getting the balance right and of giving those who make the decisions the appropriate guidance. At the moment, both north and south of the border, we are seeing signs of

that battle being fought out within the legislation itself.

I have some concerns about exactly where we are going, but I am hopeful that, with the opportunity that exists, we can get it right.

Rob Gibson: Both in onshore planning and in what the proposed Scottish marine bill might do. Given those two focuses, are there any other comments that the panel would like to make?

Jason Ormiston: The planning system that will serve the marine environment is lagging behind the level of interest in development in Scottish waters. The Crown Estate has launched several initiatives in the Pentland Firth and elsewhere in Scottish territorial waters, as well as beyond Scottish territorial waters, which have led to a significant level of developer interest. That is to be welcomed, as people want to build good renewables projects in those areas. However, the architecture that will help to identify what those good projects are is not yet in place.

Marine Scotland will be established in a couple of weeks' time, on 1 April, and the proposed Scottish marine bill will be passed later this year or early next year. The system will shadow the bill until the bill is passed, when it will have a statutory basis and we will start to see a focus on the sustainable development of renewables projects in Scottish waters.

It is unfortunate that there has perhaps been a lack of co-ordination between the Crown Estate's push and developers' interest in those areas, and how the planning system and the Scottish Government's energy division have responded. The planning system in Scotland needs to catch up. Perhaps there will be an opportunity to accelerate matters once marine Scotland is established on 1 April.

Rob Gibson: Is there a resource issue for the Government? Is it able to deploy enough expertise? The Crown Estate can rub its hands in glee at the thought of the income that it will make in due course. In the meantime, however, we must try to meet our targets for climate change and renewables.

Jason Ormiston: It is clear that there are significant challenges in environmental research and the planning process. However, the Government and the statutory consultees understand them well. They might not have everyone in place just now, but I get a sense, from speaking to officials, of a desire to invest in marine renewables and to prioritise the development of the renewables sector in Scottish waters. It remains to be seen, though, whether that is how it will turn out in the next few months or years.

Nicholas Gubbins: There is a saying that we never learn from history. We have had waves of development throughout the past 50 years that were not preceded by strategic appraisals that created certainty about where development could or could not take place. In many ways, that certainty is what is required. The last thing that we want to do in the marine sector is repeat the same mistakes as before so that development begins to proceed in certain areas and then there are almighty battles in those areas because the strategic context was not set out in advance. The key question is how far that can be set out with certainty in advance—that challenge is still there. It is almost worth putting extra resource into sorting that out now because that would save a hell of a lot of difficulty down the road.

Ms Wendy Alexander (Paisley North) (Lab): Keith MacLean questioned whether we are giving developers confidence. From a high-level point of view, the value or purpose of our energy inquiry is that we are clear that we have contributed to taking unpredictability out of the system. It is clear from the evidence that speed in the system is an issue—much of our discussion this morning has focused on how to expedite the process, and there are encouraging signs on that. However, the other thing that strikes me is the continued unpredictability of the system. A developer who was unfamiliar with Scotland would see that we have had 32 local public inquiries over the past five years, 18 of which led to refusals and 14 of which led to approvals. Three inquiries are outstanding and 32 have been decided. A 60 per cent refusal rate seems to me much higher than we can sustain long term if we want to deal with unpredictability, give confidence to suppliers or have any prospect of meeting the climate change targets to which the Parliament is expected to sign up.

Although it is comfortable for us all to focus on making the system quicker, we need to deal with the fact that an outside person looking at the Scottish system would see that there was a 60 per cent chance of a refusal. Perhaps people can guide me on whether there are fewer refusals now than at the beginning of the process, but we are still saddled with the evidence of what happens when developers try to pursue onshore renewable wind energy projects in Scotland.

It seems to me that those data are going to haunt us for the next five years. Simply ignoring the reality of the outcome of local public inquiries probably will not serve us well in trying to reduce the unpredictability of the system. Our message to developers is not just that the process is going to be quicker, but that they will have a 60 per cent chance of getting a refusal. That will lead them to look elsewhere. I would like some guidance from the panel on what we should do about that.

Leadership from the Parliament is required, but we do not seem to have the policy instrument to provide that, given that, on the evidence of the past five years, there is a 60 per cent refusal rate. It seems to me that that is the issue that the committee should highlight and dwell on. We need a different approach from that which has been adopted hitherto or that may be adopted through the secondary legislation under the 2006 act that we expect to be introduced later this year. There is a problem with nimbyism that we have not addressed.

11:00

The Convener: It is worth pointing out, for the *Official Report*, that the figure that Wendy Alexander mentions refers to the applications that have gone to a public inquiry—it does not refer to all applications.

Ms Alexander: Sure. I am not talking about all applications.

The Convener: The panel may have more information about applications that have been dealt with at a local authority level and that have not gone to a public inquiry.

Jason Ormiston: The approval rate for projects that have not gone to a public inquiry paints a more positive picture. Nevertheless, I opened my written evidence to the committee last week by saying that the Scottish planning system has a poor reputation in the international renewables industry because of the lack of certainty and the time that it takes to make decisions on things such as the Beauly to Denny power line and some renewable energy projects. Those issues need to be addressed.

On the basis of discussions with our members, Scottish Renewables believes that there must be more investment in the early conversation between the developer and the consultees—whether the local authority or statutory consultees—so that there is an understanding of whether the project is a difficult one, which the developer must be careful in proceeding with, or an interesting one on which all parties can work together in order to make it a good project. At the moment, that discussion is not being pursued to the level of quality that we require. If we get that pre-application scoping work absolutely right, the chances of a negative decision later on are radically reduced. We are not seeing that just now.

At the moment, the developer goes through the scoping exercise, after which, for a large wind power project, he has probably spent a six-figure sum on the environmental work and the planning application. The project then goes through the planning process and the developer is asked by the planning authority to provide more information. He then has to spend more money and there is more delay—and the more money he spends on the application, the more he is going to see it through.

Ms Alexander: But where is the incentive for the local community or the statutory consultees to sign up to the project? The process that you have described relies on the good will of an individual planning officer or, indeed, of the statutory consultees. We do not have a system that includes any incentives to deliver on the national policy objective.

Jason Ormiston: There is no substitute for good, effective community engagement that allows the community to express its legitimate concerns about a project and allows the developer to work with the community to address those concerns. That has to happen. We find that, where that good engagement takes place, by and large, the support of the community follows. Nevertheless, there is generally a small minority of people who object, who have a far greater impact than they perhaps deserve.

Ms Alexander: Let me push you on this. Sixty per cent of public inquiries have led to refusals. Are you really saying that the developers in 60 per cent of cases just have not been sophisticated enough in their pre-consultation strategy? That does not seem to align with the commercial logic of Scottish and Southern Energy or any other company. You cannot explain those data simply by saying that, over five years, the developers did not get clever enough in their pre-application discussions with the communities that were involved. I wish that that were true, but it does not appear to be an adequate explanation for a 60 per cent refusal rate. We need to analyse the reasons for that if we are to reduce it.

Dr MacLean: You can, analytically, draw two conclusions from the data. Either the inquiries have got it wrong and the balance should be different, or they have got it right and the 18 projects that were refused were bad projects. With the long delays or, in many cases, non-determinations, developers never get clarity about what makes a project good or bad. We have said all along that we do not expect yeses on all projects. In fact, a no is a clear signal that says, “So far, but no further,” or “This is a no-go area.” We then have clarity, which should feed back into the system so that the next wave of developments avoids whatever the problem was. There is probably a mixture of the two analytical outcomes in there.

Going back to the issue of adhering to the spirit as well as the letter of the law, I point out that within the project acceptances is a project for over 50MW, to which the particular local authority, which is well known for objecting to projects,

objected, which caused a public inquiry. The inquiry said that the project would be acceptable with some reduction in its scope, so it reduced the scope to below 50MW and said that, according to the evidence, that was fine. That meant that the Scottish Government could no longer make the decision on the project, so it went back to the local authority that triggered the objection in the first place which, despite the outcome of the public inquiry, said that it did not want the project and that it was not going forward. That kind of situation is hidden behind the statistics.

Part of the difficulty for developers is getting clarity about what is and is not acceptable at the different stages in the process. We must get clearer information, but we will get it only by having decisions that are made quickly on transparent, objective grounds. The outcome of that might continue to be that 60 per cent of projects that go to a public inquiry are rejected. However, we cannot give an answer on that because we do not have clarity yet.

Alasdair MacLeod: It is difficult for a local authority to go against objections. Local authorities need to give greater attention to objections to assess whether they can be validated. The fact that there are objections should not necessarily result in refusals for projects. However, that can often be the easy route. In a public inquiry, instead of having, say, 200 objectors who sent in a pro-forma objection, there might be only five objectors who will put their case. The strength of the objection must therefore be put in context. The difficulty is that local authorities do not clearly understand the level and nature of objections, so they automatically go to refusal rather than try to take brave decisions.

Ms Alexander: We must recognise that the process is objector led in many cases, and we need to address how we validate the quality of objections and assess whether they are evidentially based. We visited the biodiversity directorate in Brussels, which was able to say easily, "Here is the small number of cases where the evidential basis for the objection is of such quality that we will listen, but we're also able to distinguish and screen out those cases where objections are not evidentially based." It seems to me that the Scottish system at a local level does not have that degree of sophistication built into it.

It would be a pity if the committee did not think about how to address that issue going forward, because, at an aggregate, Scotland-wide level, the judgment of any investor will be, "Well, companies aren't going to waste vast amounts of time continuing to pursue an application and going to a public inquiry, with all the sunk costs that that involves, unless they believe there is a validity to their application." That is not to say that 100 per cent of the applications have validity on an evidential basis. However, it is rare in an industry for companies to pursue a public inquiry route with a 60 per cent refusal rate, and take all the sunk costs involved, unless they believe that they have a bona fide case.

It seems to me that, in considering the changes that we want in the planning system, the committee has still not found a way to address the danger of the process being objector led at local level. We perhaps cannot discuss that further today, but we would produce a more valuable report if we could dwell and reflect on the consequences of the evidence that we have considered.

The Convener: I think that that was more of a comment than a question.

We have run out of time for this panel, but I thank the witnesses very much. I think that this will be the last time in the inquiry that we will see most of you, but you never know. I thank you again for giving evidence to our inquiry on this occasion and at previous meetings—it has been valuable indeed.

11:10

Meeting suspended.

11:17

On resuming—

The Convener: We resume the meeting with our second panel. I ask the panel members to introduce themselves briefly. Committee members will then ask questions.

Dave Gorman (Scottish Environment Protection Agency): I am the head of environmental strategy at SEPA.

Dr Tim Norman (Crown Estate): I head up the planning and consents function in the marine estate of the Crown Estate.

Bob Stewart (Scottish Society of Directors of Planning): I am director of environmental services at Moray Council, but today I am giving evidence on behalf of the Scottish Society of Directors of Planning, which is the grouping of all the chief planning officers in Scotland.

John Thomson (Scottish Natural Heritage): I am director of strategy and communications at Scottish Natural Heritage.

Rob Gibson: I have a question for the Scottish Society of Directors of Planning representative. The extent to which planning authorities have revised their development plans to take account of SPP 6 seems to be critical at the moment. Can

you give us a steer on what is happening with that around the country?

Bob Stewart: I can try. I think that most authorities have considered the matter. Our problem is that although the guidance from the Scottish Government lays the onus very much on local authorities to identify areas for developments such as wind farms, the decision process for large-scale applications is basically taken out of the hands of local authorities and put into the hands of the Scottish Government's energy division, and the authorities find themselves having to respond to local pressures without being the decision makers. That is a brief description of the problem that we have come across.

Rob Gibson: It was put to us earlier that pre-application discussions and training not just for planners but for elected members would help people in local areas to understand how local communities can contribute to the national interest and how to deal with individual applications.

Bob Stewart: I do not know how many people in the room have seen an application for a wind farm, but you should try to visualise it. You would be faced with papers covering this end of the table to a depth of about half a metre. For planning appeals, you would have to deal with about seven or eight times that volume. It is almost impossible for local communities to get to grips with that; it is very difficult for members of planning authorities to get to grips with it. However, the main issue is that councillors wish to respond to local people's views. If they do so, that leads to public inquiries and to the uncertainty that was mentioned previously.

Rob Gibson: Do you think that the change to the electoral system, whereby there are now far larger wards with three or four councillors representing a much bigger area, will alter the response of individual councillors to the pressure that is put on them by small groups of objectors?

Bob Stewart: It has not done so in my experience. In Moray, we have dealt with applications for wind farms and for two biomass plants. The council is also responsible—I am responsible—for a methane collection plant for landfill sites, and we have also had ideas about developing a heat-from-waste plant. We have a fair amount of experience, even if we exclude the likes of solar photovoltaic cells and other forms of development. In each case, when a proposal has come before the planning authority, ward issues have not really been significant. Members have realised that there is an effect on the larger area, not only the local area.

I heard the previous discussion about community benefit. We agree that that is minuscule in comparison with the profits that can be made from such developments. Even so, authorities have tried hard to deal with such developments on their proper planning merits.

Rob Gibson: We ranged across a number of issues there, but I will focus on the severity of the on-going problems with the recruitment and retention of planners. We are concerned about that, given the evidence that we heard from the developers this morning and the evidence from Highland Council, which is today discussing cutting the number of planning officers.

Bob Stewart: I have a feeling that if we go over local authorities' financial problems, we will have an even wider-ranging discussion.

As far as planning is concerned, I think that there are perhaps skill shortages, rather than numerical shortages. The number of planning applications that have come into authorities over the past year has gone down significantly—I have heard of reductions of between 10 and 16 per cent. Most of the reductions are in small-scale applications rather than large-scale applications, so authorities still have to deal with major applications.

The Government's proposal to extend permitted development in housing will certainly assist by further reducing the number of small-scale applications, but local authorities sometimes struggle with the scope and scale of large-scale applications and the skills that are required to deal with them.

Rob Gibson: It was suggested that perhaps we need common resources in Scotland to help us get consistency from councils and to give the skills base a chance to work. Might that be a way forward to end the skills bottleneck?

Bob Stewart: I have a specific view on that, which is that local authorities have found themselves piggy in the middle. They are asked to respond to local objectors and to the local people, and at the same time they are dealing with national policy. As I say, they are not the final decision makers. The only effort that decision makers in the energy division of the Scottish Government make to try to contact local people is to put an advert in the local newspaper.

I suggest that local authorities should be treated precisely as what they are—consultees—and that the main effort to consult the local communities should be made by the energy division, which should try to bring together the objections and consider the issues. The local authorities would comment within the confines of the development plan, adding any material circumstances that they wanted to add.

Rob Gibson: Pre-application activity seems to be stymied by the fact that the planning staff do

not have the time to address it adequately. The issue is not about skills; it is about time. Therefore, there remains a question mark in my head about the number of planners in councils.

Bob Stewart: You will find no chief officer in Scotland who will not argue for additional resources. I am not going to argue with you on that point. If we are trying to find a way of resolving the problem, just leaving it with local authorities is not the way in which to tackle it.

Ms Alexander: Your comments are fascinating in terms of their policy implications. Perhaps we can unbundle them a little. You suggest that local authorities should become consultees, as the decisions are ultimately made by the Scottish Government's energy division. That would be a major reform of the way in which we have handled major renewable energy projects to date. It is a suggestion of such ambition that one wonders what has tamed the corporate affairs staff of our major companies to the extent that they have not made such a suggestion.

Will you expand on your comments? Would your suggestion find favour with any other directors of planning who struggle with that conundrum? I offered the rather tame solution of providing better incentives, which is the way in which we solve problems in relation to more conventional developments—we ensure that there is some sort of community gain that means that there are more yeses than noes. That is a much more incremental solution than the one that you are suggesting. You are suggesting that, if there is a national policy objective, the Scottish Government should have the courage of its convictions and be willing to make national decisions, and that the local authority as a consultee, along with the statutory consultees, would become the guarantor as to whether the decision, or the project, was right or wrong. Do you think that other directors of planning would favour exploration of that option?

Bob Stewart: Would I be copping out if I said that some would and some would not?

Ms Alexander: No—that is fair enough.

Bob Stewart: One aspect of the system that pleased me greatly was the inclusion of infrastructure and connectivity in the national planning framework. There has been a lack of connection between the generating source and the market. When the reporter dealt with the public inquiry at Torness—yes, I am old enough to remember that—he accepted that arguments had to be heard as to whether there could be lines into Torness and whether the routes would be acceptable. It was only after that was established that he said that, yes, the site at Torness was acceptable because there was security and there could be routes into it with pylons.

Included in NPF 2 is the strengthening of routes from Beauly to Keith—which may affect Moray Council, although it is a national objective—and a power line from Beauly to Denny. The argument for both those projects was that they would ensure that the potential of the Highlands and Islands was taken up. I think that that is a good method of leadership, which I am happy to see. However, elsewhere, local authorities have been left to their own devices. If we are to get a national policy into place more quickly, there must be more leadership along the lines of that shown in NPF 2. I would have been happier to see identification in NPF 2 of more of a framework that local authorities could address. I think that they would have responded to that.

11:30

In practice, the local authorities are consultees now, so I am not suggesting any massive change. Nevertheless, what I am suggesting addresses something that the public and central Government have not fully addressed—how, on central Government policies, planning decisions are taken and Government organisations consult the local communities.

Lewis Macdonald: That is what I want to explore a bit further. Are you talking only about applications under section 36 of the Electricity Act 1989, or are you suggesting that the decision making on smaller projects should be centralised and that the decisions should be made by central Government rather than by local authorities?

Bob Stewart: I am talking primarily about section 36 applications. We have had only one experience of a local application in that respect. The developer put forward the view that he was ensuring that the site for the proposal was small enough for the decision to be made at the local level. However, the minute that the application was refused, the developer went to appeal on the ground that it raised issues of national significance, and that appeal went through.

Whether decisions are made by reporters or under the section 36 procedure, the matter is effectively taken out of local authority hands. Wendy Alexander mentioned the number of public inquiries that have been held. I would be interested to know the number of applications that were presented to authorities that did not go to public inquiry and whose refusal was accepted by the companies involved. That would be an interesting statistic to find out.

Lewis Macdonald: Very interesting.

At the moment, under the section 36 procedure, ministers consult local authorities as well as other consultees before reaching a decision. You are suggesting that, where it is currently the local

authority's duty to consult the wider public, in order that the local authority can be a consultee on their behalf, there should be a separate consultation of the wider public by ministers. Do I understand you correctly?

Bob Stewart: Quite so.

Lewis Macdonald: If I were to question that suggestion, it would be on the issue of whether it would create additional burdens and tasks at the centre while the local authority would still have to respond to the consultation with the same level of expertise as is required at the moment but without having to carry out a public consultation exercise.

Bob Stewart: There will always be a problem with skills. It would not matter how the issue was dealt with; the skills requirement would be the same. I accept that.

We started off by dealing with such applications in much the same way as we deal with planning applications. In other words, we consulted SEPA and SNH in addition to carrying out our own internal consultations. That is duplication that the system can do without. Also, the objections must be submitted to the Scottish Government's energy division rather than to the local authority. Some people wrote in to us and others did not, so councillors had to deal with an incomplete picture. That is different from a planning application, for which everything appears in one report. To me, it seems logical that, if all the responses to the public consultation have to go back to the energy division, that is rightly where the duty should lie to publicise the application and to hear what people are saying locally.

Lewis Macdonald: So, for section 36 applications, you consult SNH and SEPA and then ministers consult SNH and SEPA on the same application, which is a duplication of the work.

Bob Stewart: Quite so.

Lewis Macdonald: It would be interesting to hear the views of SNH and SEPA on what has just been said.

John Thomson: We are all in favour of the rationalisation of the process. I do not think that the proposition that has been made has been put to us previously, but I am in favour of anything that streamlines the process. If there is duplication of effort on our part, that reduces our ability to handle other applications.

Dave Gorman: I am not familiar enough with the process that Bob Stewart has described, but in general, I agree with John Thomson. Anything that means that we have to say what we think only once to one party is welcome.

The Convener: I think that Gavin Brown has a question that follows on from that.

Gavin Brown: Yes. I want to ask about the alignment of Government agencies. My question is aimed initially at SEPA and SNH. How do your organisations reconcile your respective remits on environmental protection and the natural environment with the need to promote sustainable economic growth? If we are considering energy specifically, there are global climate change issues versus local visual amenity issues. We heard something about that from the first panel, some of which was quite positive, but there is the potential for tension in your remits. How do you reconcile your remits at the moment?

Dave Gorman: SEPA's primary role will always be as the environment protection agency. The organisation was set up by the Environment Act 1995. Under section 39 of that act, we have a balancing duty; we are required to take account of economic impacts in our processes. If we have not taken account of them in any process, or are unable to show that we have done so, that should be challengeable. As one of the starting points with any regulation that we implement, we try to show in our internal processes how we take account of the economic impact. The most explicit example is the water framework directive, with which members are probably familiar. Because such a requirement was explicitly written into that directive at the European level, we have a series of internal processes that ensures that it is met when we make decisions. The issue is difficult for us. Our corporate plan shows that we are supporting the Government's aim of achieving sustainable economic growth, and we are trying to align what we do with that.

As I came into the meeting, the previous panel was making an interesting point about clarity. If SEPA can be clear about our concerns in relation to individual applications or particular processes, such as those relating to wind farms, carbon capture and storage or any of the other big energy issues, we hope that people will not waste time and money pursuing things that have little or no chance of being progressed. A large part of what we have tried to do through the planning reforms that are starting to take place has been to try to clarify up front what we think the major issues are. In trying to carry out an enabling role, we have found that there are sometimes gaps in our information, which means that sometimes we are unable to say what the issues are. Balancing becomes much more difficult when there are information gaps at the application stage because we have to delay while we try to get information.

I will give a practical example. We do not see ourselves as having a huge role in offshore marine energy, but we need to understand it in case piping and trenches, for example, come onshore. Therefore, with SNH, we have just launched research on the impact of machines on

underwater noise to ensure that we will not need to be concerned about that issue. In my area of work at SEPA, I have been trying to ensure that we spot potential issues ahead of time so that we can provide greater clarity on them and so that when it comes to balancing, there is no excuse for developers and others to say, "We didn't know about that," because we will have been clear up front about our concerns.

We are taking the planning reform agenda very seriously. We are not making a plea for more resources; we are trying to focus on the areas of highest risk. We analysed our activities last year and found that we commented on absolutely everything, which was not an effective use of our time. We spent a large part of last year clarifying matters; this is the year of implementation in which we try to become much more risk based and much more focused on things about which we really need to say something.

John Thomson: I echo a lot of what Dave Gorman has just said. SNH has always been clear that climate change is the biggest threat that Scotland's natural heritage faces. That is the background, but obviously we also accept that we are working in the context of a Government policy that emphasises the importance of sustainable economic development. Therefore, we have always approached renewables in a positive spirit. We have emphasised that energy conservation and energy efficiency should also be major goals—indeed, they should be the first port of call—while accepting that there is a major need for an expansion of renewables. We have always wanted to play our part in facilitating that expansion.

However, we have also always said that the key is to have the right development in the right place, as is the case with so much development. That is the key in the context of not just environmental impact but public acceptability. At an early stage, we were concerned that if the wrong developments happened in the wrong places there would be a public backlash, which would make it difficult to get further developments under way.

Therefore, we have always strongly advocated a strategic approach, which is very much what Dave Gorman described. We want to get everyone's cards on the table—our cards, developers' cards and those of other interests, such as the Ministry of Defence, civil aviation and radar systems—to try to work out an optimal solution, which will almost certainly involve compromise on everyone's part.

We are moving in that direction in relation to developments on land but we are not there yet. I urge that, at sea, we do not repeat the mistakes that have been made. As a member of the previous panel said, we must try to adopt a strategic approach to renewables development at sea. As Dave Gorman said, SEPA and SNH have taken steps to do that. We have worked with the Scottish Executive and the Scottish Government over time, for example by helping to conduct strategic environmental assessments for wind and tidal energy around the Scottish coast.

We operate within pretty draconian legislation, as witnesses from the industry side said. In particular, the European directives on habitats and birds require developers to prove a negative—they must prove that the development will not be damaging. To some extent, we are the gatekeepers, in that we are the Government's advisers and help the Government to ensure that it does not fall foul of European regulations. When we consider an individual case, we must take account of the aspects that would affect the interests that are covered by the directives.

Like SEPA, we are taking the planning reform agenda seriously. We are carefully considering how we can engage further upstream in the process, in the pre-application discussions that people have been talking about and in the development of plan context—for example, development plans or supplementary guidance, such as spatial frameworks, which local authorities are currently developing. We are trying to shift our resources in that direction and to reduce the input that we make at casework level.

Unlike SEPA, I think, we have allocated extra resource to marine renewables, because we acknowledge that the area is taking off fast and that current environmental knowledge is limited. We will have to proceed on the basis of that limited knowledge, which we need to improve. We have worked closely with SEPA to ensure that we do not overlap and duplicate in the advice that we offer; we ensure that there are clear demarcation lines between our responsibilities.

Gavin Brown: Dave Gorman said that SEPA's founding legislation requires the agency to take account of economic needs. "Take account" is quite a bland phrase. How much weight do SEPA and SNH give to economic growth? Can you give transparent and objective examples of how that operates in practice?

11:45

Dave Gorman: The issue is a material consideration—that is the closest analogy that I can think of for the balancing duty. The material consideration would depend on the context. The approach to environmental legislation is similar. I often make the point in committees that environmental legislation is disparate and is written in many different ways, so approaches differ and depend on the directive that we are

dealing with. In general, however, the Environment Act 1995 provides a balance and contains a duty that says that there must be some process by which economic impact is taken into account. What you then find—usually published on our website—is how things are done for any individual regime.

In the example of the water framework directive, I am familiar with guidance called regulatory method 34, which sets out in detail how one might take account of environmental impact. The presumption in SEPA's licensing regimes, unlike in SNH's regimes, is that one will get a licence. If someone is going to impact unacceptably on the water environment, they must take and pass a series of tests. The process is a little complicated, but what it comes down to is that if they can show that the benefit from their individual application—for a hydro scheme, for example—outweighs the benefit from keeping water quality as it is, we would be required to give them a licence. Although the process is detailed and depends on the regime, our staff have detailed guidance to follow. The guidance is available on our website—it is rather dull, but we could make it available if the committee wanted to know more about it.

John Thomson: SNH has several balancing duties in its founding legislation, not just those that relate to socioeconomic interests. We attempt to apply those in all our work.

In the case of renewables developments, and indeed other developments that are going through the planning system, a decision maker in that system weighs up all the considerations. We are only advisers to the decision maker, and obviously we are not experts in socioeconomic issues in the same way that we hope to be reasonably expert in environmental issues.

We have never tried to second-guess other people's judgments about the importance of interests in any particular development, except that we have attempted to apply some sort of proportionality test that we are developing further. The test asks people to try to put themselves in the position of the layperson and ask whether it is self-evident that those other interests outweigh the environmental interest in that case. In such circumstances, we would say that we will not press the environmental case because we recognise that it would be nonsensical to do so.

However, if there is no obvious disproportion our feeling has been that it is right that the decision maker, whose role it is to weigh up all the different factors, should be presented with the best environmental evidence that we can give them and allowed to weigh up the evidence against the other considerations.

The Convener: One of the concerns, not just in the energy sector but in others, is that the silo approach that is taken by the various agencies including SNH and SEPA—not just between the agencies, but within them—can lead to perverse decisions and make decision making more difficult.

I offer an example that we picked up during the inquiry when we visited Cameron Bridge distillery. The distillery was required by SEPA to stop pumping the organic waste from its distilling process into the Forth and, in order to do that, it came up with the idea of having a biomass plant that would use the waste product to heat the distillery. However, another part of SEPA decided that because a waste product was being used, it could not be treated as a biomass product even though it was entirely organic and therefore the plant had to install greater levels of scrubbers, or whatever, for the exhausts, despite the fact that the original product from which the distillery burned the waste would not require that. The extra process increased the cost, which made the project unviable and meant that the distillery would have to continue pumping the waste product into the Forth.

That does not seem logical, but the situation seems to have come about because one bit of SEPA was not talking to another bit of SEPA to work out the best overall solution. How do we get round that, especially in developing energy projects? There will always be a contradiction between the micro and the macro and we have to get the balance right. The balance does not seem to be there at the moment because we are looking too much at individual European Union directives and not over the piece to find the best overall solution.

Dave Gorman: I have a lot of sympathy regarding that case. You are quite right: the way to deal with such issues is to have a nationally consistent line on important energy activities. For example, with carbon capture and storage, the last thing we want is for the local team to have to reach a view by itself. There might be similar situations with wind farms and so on.

Part of my job, and part of what we are trying to do around planning and regulatory improvements, is to achieve that national consistency. There is a great tendency for a regulator to keep asking for more information if it is not sure. We are trying to stop doing that and instead to determine what information we need to make a judgment, to ask for that information and then to make that judgment. That is the general line. I am working hard in my department to get such approaches in place. We intend to publish an energy position paper in due course, which will try to show the

outside world what we think about biomass, wind farms, carbon capture and storage and so on.

The individual case that you mentioned forms part of a more general problem with waste regulation, which some people will be very familiar with. Our difficulty is that the law that has been written at European level is clear that the material concerned is waste. There is plenty of case law that suggests to us that we cannot simply ignore that. We have looked for ways around that where there is an environmental benefit, but we always come back to the point that it is not for SEPA to ignore the law. If the law is clear that something should be done in a certain way, we have to follow it. If we do not, the other side of the equation involves the local public and stakeholders asking SEPA why it is ignoring the law.

Waste presents a particular difficulty. We hope that there will be some improvement as we implement the revised waste framework directive. I accept the point, however, that there are a number of examples in which waste can be a material that people would like to use again. It might fall foul of the waste incineration directive, in particular. There is a difficulty there.

The Convener: Surely some logic can be applied. If something is burned, consideration must be given to what is going into the waste stream before a decision is taken on whether the product requires additional scrubbing or filtering. In the case that I described, something that is not toxic is going into the waste stream, but it is being treated as if it is toxic. That does not make any sense. Surely someone in SEPA can consider such situations on the ground in a more logical way than simply noting that one directive says X and another says Y.

Dave Gorman: We would certainly like the powers to make such determinations. Generally, we would like to have principles-based regulations that tell us what their objectives are. That would allow us to make a judgment. However, not all legislation that comes over from Europe is like that and some of it is very prescriptive. In some cases, the need for monitoring drives what goes on, in that the legislation might say that a certain type of monitoring has to be done. We can make a case for getting round that in some, but not all, cases. That might not sound acceptable, but that is the reality. To address the matter, we try to engage with Europe as much as possible. We get feedback from industry and take it to the Scottish Government. We also approach our networks in Europe and put our points to Europe, highlighting the difficulties that have to be addressed.

Obviously, we agree that where there is a reuse of material that brings a benefit in energy and climate change terms, that is positive and to be encouraged. However, we have a series of directives that have been written at European level to deal with individual cases of environmental pollution, and the legislation does not necessarily consider the big picture on climate change and energy. We have gone to Europe and made those points, and we have done so with industry at our back. We have had some success, and we have some hope that we can fix the problems in the future, but unless there is a change in the law that we are required to implement we feel that our hands are tied.

Lewis Macdonald: I will pick up on issues around the Natura 2000 regulations. This is perhaps an SNH equivalent of the SEPA case that we have just heard about.

Let me put to John Thomson the case of the Lewis wind farm application—not necessarily to seek comments on that specific application, but to ask about the principle that the advice that his agency gave to ministers might have put in place. Correct me if I am wrong—I am interested to hear your view—but my understanding is that the advice that SNH gave to ministers in the Lewis case was that Natura 2000 took such precedence over every other piece of legislation and Government policy that it was not open to ministers to consider the social and economic benefits of proceeding. Is that a description of the situation that you recognise?

John Thomson: Not precisely, because my clear understanding of that legislation is that it contains a loophole—a let-out, if you want to call it that—which relates to overriding public interest. If it can be demonstrated that there is an overriding public interest in a development that will be damaging to a Natura site, that provides a justification for allowing the development to proceed, albeit that there are requirements to take compensatory action and so on. However, the overriding public interest must be able to be proved.

I was not involved, but I am aware that some European Commission officials visited the area and discussed the issues in some depth. My understanding of the view that those officials took was that it cannot easily be demonstrated that a particular wind farm development constitutes an overriding public interest. There is no doubt that there might be an overriding public interest in the development of renewable energy to combat climate change, but there are lots of opportunities for renewable energy development, including wind farms specifically, throughout Scotland. The argument that the Lewis development constituted an overriding public interest would have been difficult to sustain in the European courts, because alternatives would have been available.

Lewis Macdonald: But no alternatives on that scale would have been available on that island.

Therefore, the social and economic development of the island is stymied by the decision of ministers not to consider social and economic issues. Are you saying that the decision that ministers took not to consider those issues was based on advice from Europe, rather than advice from SNH?

John Thomson: Ministers' own judgment has to be used. We are their advisers, but ultimately, the obligations and responsibilities under the Natura 2000 directive rest with the Government. Strictly speaking, they rest with the UK Government, which is the Government of the member state. We advise the Government to the best of our ability. We certainly advise it on the environmental impact, but it is not really our role to advise it on the interpretation of the European legislation. I believe that ministers take advice on that from their legal advisers.

Lewis Macdonald: In this case, it was clear from the letter of determination rejecting the application that ministers had not considered the social and economic significance for the community. Part of their defence was the advice that they had from SNH on the environmental impact. In your view, is that a reasonable proposition from ministers? Is it reasonable that, in such a case, the environmental impact can allow ministers not to consider wider consequences?

John Thomson: As I said, it comes down to ministers' interpretation of the European legislation and what it requires. What you have described was their interpretation in that case, and I would not want to comment on it.

Lewis Macdonald: Would you advise ministers on how they should interpret natural heritage legislation?

John Thomson: We would advise them on the environmental impacts, to the best of our ability. We would not advise them on the interpretation of the European legislation. Indeed, in the past, we have received our advice on such interpretation from Scottish Government, or Scottish Executive, solicitors.

Lewis Macdonald: I do not want to put you in a difficult position, but I understood from your earlier evidence that SNH was acting as the gatekeeper for European legislation and that it was part of your role to advise ministers how to avoid falling foul of that legislation.

John Thomson: When I said that we were the gatekeepers, what I meant was that, over the years, the steer that we have received from officials in Government is that ministers expect us to protect their backs in relation to the European legislation. Ministers do not want to find themselves in the European courts because we have given them duff advice on the significance of the environmental impact of a development affecting a Natura interest. In that sense, I would say that we were the gatekeepers, but we are not responsible for interpreting the European legislation on ministers' behalf—that is their job—although we obviously try to keep ourselves well informed about the way in which that legislation is being interpreted in the European courts. When cases and court judgments have implications for the approach that we adopt, we try to reflect those in our consultations with the Scottish Government and its legal advisers, and in the advice that we give to Government.

12:00

Lewis Macdonald: Those comments are helpful. My next question relates to the other end of the spectrum. Much of SEPA's and SNH's time must be consumed by non-contentious applications. Dave Gorman spoke about trying to sharpen the focus, which has been attempted before. Would it be easier for both agencies if they were not statutory consultees and if they were able to respond to applications on their own initiative, instead of being obliged to respond to every application? Would that save time and public money?

Dave Gorman: I think so. I am not a planner, but I understand that the Town and Country Planning (General Development Procedure) Order 1995 specifies the issues on which local authorities must consult SEPA, including applications that may increase the risk of flooding in an area and applications relating to fish farming, oil storage, sewerage and cemeteries. Besides the list of issues on which we must be consulted, there is a list of types of application, agreed over time with local authorities, that we would like to see. There is mission creep in that area.

When we are asked for advice, we tell local authorities that we do not have many planning staff and that they must focus on the most important issues. At the same time, we must try to ensure that we do not leave in the lurch those who previously depended on us. We are thinking about ways in which we can train up colleagues in other agencies or local authorities on issues that we would like them to understand, put better advice on our website, make a contact point available at all times and make much more use of standing advice. When we asked local authorities what they thought of our performance, they said that we were helpful and that they respected our knowledge, but that our letters back to them sometimes ran to five pages of detailed comment, which was not helpful. They wanted us to clarify and simplify matters. We are trying to withdraw altogether from dealing with lower-risk issues or to put on our website standing advice that indicates what we think about issues on that scale.

The Convener: Councils often complain to MSPs about the fact that statutory consultees have not yet responded. Sometimes, when you respond, it is to say that you have nothing to say. Is one of the purposes of the review that you have described to ensure that, when you ask to check an application, you indicate quickly whether you will respond formally, so that councils are not left waiting for a response that they will not get?

Dave Gorman: Yes. When we examined in detail a number of process issues, we found that we were double-handling information and introducing unnecessary delays. We hold up our hand on that point and promise to fix the problems.

Bob Stewart: From talking to some of Dave Gorman's colleagues, I know that about 90 per cent of the comments that we get back from SEPA are requests for further information. As he said, there is no better means of delaying proposals than continually to ask for information. Until relatively recently, we were receiving requests for flood risk assessments of planning applications on flood plains with a one-in-200-year risk, which is fairly small. Such requests are relatively understandable if the risk is one in five or one in 10 years.

Recently I approached SEPA with a view to reducing the number of requests. I suggested that, to avoid duplication, we could get advice from our own flood team, which has skills and local knowledge. The response that I have received has been fairly positive, although we have not reached a final agreement. The agencies are making efforts to reduce the effect that they have, which is to be welcomed.

John Thomson: SNH's current approach is in line with SEPA's. We, too, are trying to rely more on guidance—not just for local authorities but, we hope, for developers and their advisers and consultants. If we are to streamline the planning system, which affects renewables, everyone has a part to play. Hopefully, if applications are well informed and well conceived, they will go through the system quickly, whether or not we have to comment on them.

We hope that we will need to comment on rather fewer applications in the future than we have until now. Our experience with the renewables industry has generally been pretty good in that respect. We have worked closely with the industry on issues such as the assessment of bird strike risk, to take one example that is prominent in that field. That work has been productive and has fairly often resulted in jointly endorsed guidance of one sort or another. However, as with most industries, the renewables industry is a curate's egg—there are very good developers and less good ones. One aim must be to try to ensure that the good drives out the bad, rather than the other way round.

The Convener: Tim Norman has been waiting patiently, so I ask Rob Gibson to ask him a question.

Rob Gibson: I would hate to think that the Crown Estate was being left out of the discussion, particularly on the new developments in tidal and offshore wind power. In the Crown Estate's view, what future challenges are presented by the development and deployment of new technologies such as marine and offshore wind?

Dr Norman: Do you mean in a broad planning context?

Rob Gibson: Yes.

Dr Norman: My focus in the Crown Estate is at a strategic level, in considering how development can be progressed on such a large scale. The issue, which falls under the strategic planning rubric, is how a strategic planning framework can be put in place that allows development on a large spatial scale. We need to provide a robust underpinning to the consent process. We must get that right, so that we can provide confidence to the industry and get the investment that will lead to development. We must first get the strategic framework right—the planning system is further down the track. Our initial focus is on getting the strategy right.

Rob Gibson: We can see how the process is rolling out to an extent. For example, the approval of applications in round 3 for offshore wind development is expected to take several months. Is that faster than in rounds 1 and 2? Have you considered that issue, to try to expedite development?

Dr Norman: Yes. We have specifically put a lot of effort into that in round 3. In fact, much of my time is spent on understanding the likely route for consents for round 3 projects. In some cases, because of the zonal approach in round 3, the developments are much more complex than simply individual sites. That in itself is a response to lessons from rounds 1 and 2, in which there were problems with cumulative and in-combination effects from multiple developments in a region. John Thomson mentioned European directives—the issues to do with European directives were the particularly thorny ones. We might come back to that in considering how the statutory nature conservation agencies can provide advice to assist in that process. The zonal system is intended to provide a more strategic approach to the planning and consenting of developments, so that we identify issues earlier and respond to them.

Some of the proposed zones are particularly large so, as you can imagine, the issues might be particularly complex. Other zones are smaller, so the process may be more like the one with which we are familiar for offshore developments elsewhere. We have spent a lot of time thinking about that and how we can assist in the process.

Rob Gibson: Leaving aside the issue of advice on nature conservation for a moment and thinking strategically about developments, do you have a handle on how we fit, say, offshore wind developments into the transmission network in any kind of order?

Dr Norman: We have been working closely with transmission operators, National Grid and other organisations that are responsible for the grid infrastructure. There is clearly a constraint, and there are many views on how to solve the problem. We emphasise more generic views about the need to work to understand what and where the demand is, how the existing process can be modified to make access easier and how to identify at an early stage the strategic reinforcements that will be required to accept capacity.

Rob Gibson: Does development of land transmission come first, to be followed slightly later by development of under-sea transmission?

Dr Norman: We have explored both options. We are agnostic on the solution; whichever solution has the least cost and can be delivered is the right one for us. We have invested time and effort in exploring possible solutions and broadening discussion around the issue—it is about putting ideas out there. We want to emphasise the importance of solving the problem, given the strategic role that the grid infrastructure plays in delivering the renewables targets. However, other people are more technically qualified than I am to identify specific solutions.

Rob Gibson: Given that you are considering the matter strategically, you must acknowledge that infrastructure must be in place on the coast to ensure that marine developments can be launched from the shore. You have a policy of levying money from harbours and ports. Have you considered means of incentivising such places, which are central to the developments that we are considering?

Dr Norman: Do you mean with respect to the offshore transmission network?

Rob Gibson: No, I am talking about the moving of equipment from the shore to its offshore position—and I am thinking about the transmission network down the line, but let us stick with the infrastructure that is put in place first of all.

Dr Norman: We commissioned a study in collaboration with National Grid to understand what the connection might look like. There is a chicken-and-egg situation, in that we do not yet know what the development of the zones will look like, because we have only just closed the tendering process. Given the scale of the potential works and the investment that will be required, it would be a little dangerous to be pre-emptive about what the situation might look like.

Rob Gibson: The national planning framework calls for a co-ordinated approach to development in the Pentland Firth. Do you regard yourselves as having a role in that regard, to allow infrastructure to be put in place?

Dr Norman: We certainly see a role for us. The purpose is to provide more co-ordinated development of wave and tidal projects in the Pentland Firth, so that such projects happen and the technology is encouraged to develop. It is clear that part of the process is about ensuring that we have the transmission network that is needed. As I said, we do not yet have a firm view on the solution. However, working with the people who are involved in the planning is certainly part of our role.

Rob Gibson: Let me step back from transmission and consider the installation of infrastructure. You raise levies from ports all round the country, some of which will be involved in renewables development. Have you considered offering tax holidays or other incentives to ports, to help them to come to the table and assist in the smooth development of infrastructure? Such an approach is within your power.

Dr Norman: I cannot answer your question directly; I do not have the detail that I think you are seeking. However, I can say more broadly that we are conscious of the need to develop, encourage and incentivise the supply chain—I think that that is the issue behind your question.

We are in a good position to encourage industry and other interested parties who are working with the enterprise organisations, and to emphasise the opportunities that exist not just in the Pentland Firth but more broadly, given that we have had three bidding rounds for developments in territorial waters. I cannot comment on whether that will lead to specific incentives for particular occasions—I do not know the answer to that question.

12:15

Christopher Harvie: What is the Crown Estate's legacy of knowledge from the North Sea oil period? I am thinking of pipeline and electrical transmission through Crown possessions.

Dr Norman: Legacy in what respect?

Christopher Harvie: In the sense of the procedures and so forth that the Crown Estate has built up over the years in dealing with, deriving income from and planning such matters.

Dr Norman: We have a record of the previous works that were undertaken and we now employ several individuals in our marine estate with considerable experience of the oil and gas industry, not least of whom is Rob Hastings, the director of our marine estate.

Christopher Harvie: Of course, we have a mix of electricity, pipeline and gas transmission, but we are dealing with a future in which the gas component will inevitably drop off and the electricity component will become much more complex because of the necessity of maintaining the grid system. There is a history to all of this. The 1940s saw small local power stations and the first north of Scotland hydro schemes. The 1960s to the mid-1990s saw the building of thermal-nuclear stations. Since then, operations have become more decentralised.

One element is missing from the mix, and my experience in Germany tells me that it is crucial. I refer to the Stadtwerk, which is the local electricity distributor and strategic organiser at the urban level. The Stadtwerk is tremendously important in Germany when it comes to the installation of efficient forms of generation including combined heat and power plants and structures that use waste products such as methane. There is a series of discontinuities in British energy transmission planning that is not paralleled on the continent, where there has always been continuity in local consumption and in the planning for that consumption. Coming to this country was quite a culture shock after my time in Germany. I am rather worried about this aspect of our long-term development. What are the panel's comments on that?

Bob Stewart: You mentioned Denmark in a question to the previous panel. At one time, Danish local authorities were statutorily obliged to produce energy plans that set out the ways in which they would reduce energy usage in their area. That duty was placed on them because Denmark has no North Sea oil or gas—it was a matter of necessity.

You correctly identify the need to create links. You also mentioned the Stadtwerk. In Europe, you see that different forms of energy are developed in different places. In Freiburg, for example, you see the development of solar energy and photovoltaic cells, whereas in other parts of Europe you see the development of biomass plants. In Denmark, like Scotland, you see the development of wind power.

I was interested to visit areas near Nürnberg to see the development of photovoltaics, which is linked to the farming system. People receive a subsidy or income, which is guaranteed for 20 years, for the electricity that they produce. That has encouraged farmers and others to developer photovoltaic and other energy sources such as micro hydro, with the result that subsidies to farmers have been reduced, because they have that income. We can learn from the linking together of policies in other areas.

Dave Gorman: This topic relates to one of the principal things that I wanted to say to the committee.

You will not have been surprised to learn that our evidence refers to the pressing need to solve the climate change problem. As far as SEPA is concerned, that—along with security, I suppose—is the number 1 issue for the energy system. Good progress is being made in relation to electricity, but energy is about much more than electricity; it is also about transport and heat.

We know that there is a European target, which applies at the UK level, to generate 15 per cent of our energy from renewables by 2020—in Scotland, of course, that is a 20 per cent target. We therefore have to increase our current levels by 1,000 per cent in 10 years, which has big implications for the way in which we use renewable heat. To be candid, we are absolutely nowhere compared with other parts of Europe. Clearly, some action is being taken by the Scottish Government and the UK Government on incentives, but the planning system must try to tackle the issue as well.

We want heat mapping to identify where the major sources of waste heat and renewable heat are at the moment and where they might be in the future. Once people have that information, they can build infrastructure around those sources and try to match them with users.

SEPA has put its toe in the water in this area with our thermal treatment guidelines, which try to ensure that future energy-from-waste plants focus not only on generating electricity but on using the heat. However, that is just one aspect; there are many others. For example, there are huge opportunities around the Commonwealth games developments to demonstrate district heating and the utilisation of renewable and waste heat. If we do not take advantage of such opportunities, we will fail to meet the European targets.

There are incentives for people to engage in work around renewable energy, but the planning system has to support that.

Christopher Harvie: I simply make the point, in relation to energy in the Highlands, that in and around Inverness there is the biggest assembly of

big supermarkets in Scotland, and we know what supermarkets do in terms of heating, cooling and ejecting huge amounts of exhaust into the atmosphere.

John Thomson: It is essential that we get the focus down to the municipal or regional scale. The climate change and emissions reduction objectives need to be the basis for discussions about the renewable heat and renewable energy options at that level.

The last set of witnesses talked about community attitudes. It is true that we will never get everybody in communities to agree on anything, but the best way of ensuring that developments of whatever kind proceed without undue objection is to have local debate and dialogue about how the area is going to achieve certain objectives and make its contribution. To date, there has not been enough of that, with the result that there is insufficient engagement at the local level with the overall objective and there has been no recognition at that level that, if we are to achieve the objective, we will have to make certain sacrifices and compromises.

Lewis Macdonald: My first question is for Bob Stewart. Would the extension of general permitted development rights to cover the range of microrenewables free up some of the skills that are clearly at a premium within authorities? Is that urgent?

My second question is for anyone to answer. On offshore developments, particularly outwith the territorial waters, what should be done to expedite the approvals process to ensure that we do not encounter the same kind of blockages that we have encountered in relation to developments on land?

Bob Stewart: Before answering the question that was directed at me, I will add my penny's-worth on the second question. The issue involves not only planning but building standards and the acceptance of Building Research Establishment environmental assessment method standards, for example.

I have no problem with certain microrenewables technologies, such as solar panels and air and ground-source heat pumps, but there is a problem around the efficiency or otherwise of small wind turbines in urban areas, and local authorities would have greater difficulty in accepting them as permitted development. Having said that, I note that we all accept television aerials on houses, and there is an argument that permitted development rights should apply to forms of energy generation technology that are equivalent to something like a Sky dish.

Authorities should comment on offshore developments rather than decide on applications. There are two aspects to the issue. The first is where the power comes ashore. At Torness, the recommendation that the first 2km of line from the facility had to be undergrounded was accepted. We have to consider the extent of undergrounding that one can reasonably ask for in relation to offshore developments. The second aspect is more positive. Developments in the Moray Firth, for example, could lead to jobs in our harbours and on boats in the area. Obviously, there is tremendous expertise in the area already, which could be utilised.

Dr Norman: One planning development that has been useful with regard to round 3 projects that are outwith territorial waters is the separation of the needs-case policy from the decision making. We look forward to policy statements that enshrine those overarching arguments, because it is difficult to make them on a case-by-case basis.

A specific blockage that we have focused on involves the larger-scale environmental effects that can accrue from multiple developments, because particular problems arise at the point at which they intersect with European interests. We have already had useful discussions with the statutory agencies about what those issues might look like and how they might be tackled.

One issue that always arises in discussions is the level of resourcing in the agencies and their ability to provide timely and robust advice. As I said earlier, the advice from the statutory agencies to the competent authority, whatever that might be, is critical, as it gives the authority a robust evidence base. I have a lot of sympathy with organisations such as SNH that are required to provide such advice.

We are dealing with considerable uncertainties in the marine environment. One lesson that we have learned from rounds 1 and 2 is that uncertainty about the effects of wind farms is what causes problems with gaining consent, particularly given the high precautionary bar that is embedded in the habitats directive.

There are other issues, but those are the ones that are occupying my time at the moment.

John Thomson: As I mentioned earlier, we have assigned additional resources to marine renewables-related work—in the past, we assigned additional resources to onshore renewables-related work. We have done that on a time-limited basis, because we are not confident that, a couple of years down the road, we will have the overall resources that will enable us to support that level of activity on renewables relative to the other priorities that we have been set. I should point out that although we have addressed the question of resources for statutory consultees in the short term, it remains on the table.

12:30

Dr Norman: One advantage of the approach to round 3, with the strategic overview of the territorial waters and the Pentland Firth that we can provide, is that it will give greater certainty about the pipeline of applications that will come forward, which I hope will give members greater certainty about the resourcing that will be needed. The approach to onshore development is more piecemeal. I do not mean that in a negative way, but it makes it difficult for organisations to form a view on how the workload will pan out over more than an immediate time horizon.

With round 3, we are looking to 2020—we have a project plan that extends that far ahead and an understanding of when the majority of consents work will need to be undertaken. We are looking forward, although we have not yet finished the leasing round. We are thinking through the consents process to identify where uncertainties will impact on the ability to reach decisions. We have had useful discussions at an early stage with agencies about how we may configure the process to enable us to identify key strategic questions and, more important, what we can do to resolve them.

The Convener: I have a final specific question for SEPA. In the supplementary written evidence that it submitted to the committee for today's meeting, Scottish and Southern Energy states:

"There are industry-wide concerns over SEPA's execution of its regulatory function in relation to hydro and unnecessary barriers to further development being created by its interpretation of the Water Framework Directive and its application of"

controlled activity regulations. It makes particular reference to the level of charges, which, it says, are higher than those elsewhere in the United Kingdom. If the issue is proved to be a barrier to the development of small-scale hydro, will SEPA be willing to re-examine it?

Dave Gorman: I will take a couple of minutes to reply, rather than answer simply yes or no. We are aware of the concerns of the hydro power industry, but we do not necessarily accept them. Our approach to the licensing of hydro is determined by the requirements of the water framework directive and the requirement to take account of social and economic impact, alongside environmental impact, which comes from the Scottish Government. The industry does not think that we are taking the right approach, but your question needs to be directed to the Scottish Government and to Europe, which are forcing us down this road.

The industry thinks that some of the issues that we are taking into account are not strictly environmental, but social and economic. Funnily enough, in this case, the industry probably thinks that the matter should be left to the planning system. We can provide you with more detail in writing, if you wish.

The Convener: That would be helpful, especially if there are issues that we need to take up with the Government rather than you.

Dave Gorman: Charging is an issue. I am not in a position to comment on the exact relationship of our charges to those in other parts of Europe, but there is clearly a problem with the level of charges, as we have been overrecovering. We have an overall charging system for the water environment and water services—the entire water framework directive—that is in balance. However, stakeholders have pointed out to us that, within the overall charging scheme, there is a mismatch between point source pollution, which has been overegged, and water resource pollution. The industry has raised a legitimate issue. Overall, the scheme is in balance, as required by the law; however, within the scheme, more time has been spent on point source pollution than on water resource pollution. We accept that there is a problem and are committed to fixing it.

The Convener: Thank you for those comments. A written note on the issues that you have set out would be helpful. If panellists wish to make any additional points to us in writing after the meeting, they should feel free to do so.

Thank you for your evidence, which has been helpful. I suspend the meeting briefly to allow the witnesses to depart.

12:34

Meeting suspended.

12:35

On resuming—

Arbitration (Scotland) Bill: Stage 1

The Convener: The next item is consideration of our approach at stage 1 to the Arbitration (Scotland) Bill. As members know, the Economy, Energy and Tourism Committee has been designated as the lead committee on the bill, because it is very important to economic issues. That is why paper EET/S3/09/10/3 indicates that we will take evidence from a lot of people with interests in the justice system. I look forward to a refugee from the Justice Committee and people with a legal background taking the lead for us on the bill.

Having made my slightly cheeky comments, I refer members to the approach paper. The timetable that it sets out will enable us to meet the deadline that the Parliament has set for completion of stage 1, which falls immediately before the summer recess. Are members content with the suggested approach?

Members *indicated agreement*.

The Convener: I close the public part of the meeting and thank the members of the public who are present for their attendance.

12:36

Meeting continued in private until 13:17.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 27 March 2009

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Blackwell's Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

Scottish Parliament

RNID Typetalk calls welcome on
18001 0131 348 5000
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by RR Donnelley