WAVERLEY RAILWAY (SCOTLAND) BILL COMMITTEE

Monday 21 March 2005

Session 2

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WAVERLEY RAILWAY (SCOTLAND) BILL COMMITTEE
5th Meeting 2005, Session 2

CONVENER

*Tricia Marwick (Mid Scotland and Fife) (SNP)

DEPUTY CONVENER

*Christine May (Central Fife) (Lab)

COMMITTEE MEMBERS

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)
*Gordon Jackson (Glasgow Govan) (Lab)
*Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

George Baillie
Robin Bull
David Campbell (Scottish Environment Protection Agency)
Andrew Coates (Environmental Resources Management Ltd)
Roger Doubal (Scott Wilson Scotland)
David Fish (LandAspects)
Angela Foss (Scottish Environment Protection Agency)
John Gannon (TerraQuest Solutions plc)
Alison Gorlov (John Kennedy and Co)
Mr Steve Hunt (Scottish Natural Heritage)
Lily Linge (Historic Scotland)
Berend Meijer
Douglas Muir (Midlothian Council)
Ashley Parry Jones (LandAspects)
Stephen Purnell (Environmental Resources Management Ltd)
Mr Iain Rennick (Scottish Natural Heritage)
Andrew Rosher (Turner and Townsend)
Bruce Rutherford (Scottish Borders Council)
David Southern (Harrison Cowley)
Ron Street
Dr David Wyllie

CLERK TO THE COMMITTEE

Fergus Cochrane

LOCATION

Scottish Mining Museum, Newtongrange

Scottish Parliament

Waverley Railway (Scotland) Bill Committee

Monday 21 March 2005

[THE CONVENER *opened the meeting at 10:41*]

Waverley Railway (Scotland) Bill: Preliminary Stage

The Convener (Tricia Marwick): Good morning. I am sorry for the slight delay in starting. I open formally the fifth meeting in 2005 of the Waverley Railway (Scotland) Bill Committee—our 13th meeting overall.

Today the committee will consider evidence on the promoter's notification arrangements and the adequacy of the accompanying documents. At this stage, the committee must be satisfied with the adequacy of the accompanying documents. The committee will wish to be satisfied with the adequacy of the information or methodology that was used by the promoter in drawing up the accompanying documents. The committee is grateful to the objectors who, along with the environmental regulators, have submitted written evidence to the committee on the issue.

Last year, the committee commissioned what is referred to as a peer review: an independent analysis of two chapters in the environmental statement, which is one of the accompanying documents. Those are the chapters dealing with noise and vibration and with air quality and carbon emissions. The review considered several issues, including the methodology that was used by the promoter in drawing up the two chapters, whether that reflects current good practice and mitigation issues.

This is not the stage for the committee to consider detailed evidence on the substance of objections that may focus on topics such as noise and vibration or air pollution. That is for the consideration stage, should the bill proceed that far. Rather, we must be satisfied that documents such as the environmental statement stack up and are adequate to allow us to consider such topics effectively.

It is hoped that we will have a break for lunch at around 12.15. Depending on the progress that we make, we may take further short breaks after we have heard from the first two panels this morning and this afternoon. Members of the public are welcome to leave the meeting at any time, but I ask them to do so quietly. Although the meeting is being held in public, it is not a public meeting. It is part of the formal work of the Parliament, so I would appreciate the co-operation of members of the public in ensuring the proper conduct of business today.

I ask everyone to ensure that all mobile phones and pagers are switched off, as they can interfere with the broadcasting equipment. They are also annoying. As the meeting is quorate and no apologies have been received, we shall commence with evidence from our first witnesses.

We begin by considering bill notification arrangements. The members of our first panel of witnesses, who will give evidence on the promoter's notification arrangements, are Ashley Parry Jones, referencing manager at LandAspects; Alison Gorlov, parliamentary agent for John Kennedy and Co; and David Fish, principal surveyor and quality manager at LandAspects. Welcome to the meeting. I understand that Mrs Gorlov wishes to make a short opening statement.

Alison Gorlov (John Kennedy and Co): We are grateful to the committee for the opportunity to bring you up to date on the referencing review. Mr Fish and his team have been conducting an in-depth review of the referencing work in line with the methodology that the committee has seen.

The Convener: Excuse me for a moment, Mrs Gorlov. We are having trouble hearing you above the sound of the fan. Can something be done about that? I will suspend for a few minutes until the problem is sorted.

10:45

Meeting suspended.

10:46

On resuming—

The Convener: Let us try again. I ask Mrs Gorlov to speak up a wee bit while we try to sort out the fan situation. Thank you.

Alison Gorlov: The review has proved to be a mammoth task because it involves a re-reference in all but name and the team has had to expand to provide the resource that the review work demands. The work is not complete and completion is expected within five weeks.

It was clear to LandAspects from the outset that the risk factors associated with affected land outside the bill limits were quite different from those relating to land within the limits. In order to discover any problems as soon as possible, the review team has prioritised what it believes to be specific risk areas. Those are residential properties that are affected because they abut—that is, they share a boundary with—the bill limits.

As at today, the team has completed the review of 100 per cent of the geographical areas and properties so targeted. In geographical terms, that represents approximately 25 per cent of the abutting land. The review has also covered 5 per cent to 10 per cent of the land within the limits. The review is therefore incomplete and, as I said, it will take a further five weeks to complete.

In the absence of a full review, one cannot produce any meaningful analysis of the figures. We can report, however, that the review has so far revealed 21 plots in respect of which errors arose. Three of them relate to notices regarding land within the limits of deviation or limits of land to be acquired or used. The rest are notices that relate to abutting land. In some cases, it is not certain that the land abuts or that the properties identified enjoy rights that entitle them to notice in respect of abutting land, but the view was taken that notice should be served in those uncertain cases.

The cases that have now come to light could have been discovered only by the in-depth review of the files—the re-reference—that is now being carried out. The checks that underpin the assurances given by LandAspects last year were sound, but it could not go as far as is now being done. It was for that reason that the assurances were caveated rather than absolute. LandAspects said that the information went as far as it could ascertain at that time. Neither the time nor the need as then understood allowed for a review last year of the sort that is now being done.

We believe that with the exception of one possible case known to Mr Gannon, from whom the committee will hear later today, a review such as this has never previously been carried out. That makes comparison with other infrastructure project references even more difficult. The review has revealed features that have not until now come to light in the referencing profession and that are likely to inform referencing procedures in future. Perhaps that aspect of the review emphasises the fact that a great deal of what has arisen relates to aspects of the Parliament's requirements that are not to be found elsewhere in United Kingdom referencing procedures. We discussed those unique features with the clerks in advance of starting but, unfortunately, they were unable to provide any guidance. The procedures were new and untried.

The Waverley Railway (Scotland) Bill was not the first private bill, but the promoter of the bill was the first to carry out a reference for a Scottish private bill and so was the first to implement the new procedures. The original reference was therefore a first.

Until the review is complete, it will not be possible to make a final assessment of the original reference. However, from what has come to light so far, we believe that the level of error that Mr Brocklebank said was highly unsatisfactory was within the parameters of what was to be expected in such circumstances and what is to be expected in similar cases. Our view was and remains that the original reference was sound.

The Convener: Thank you. Given the problems that we have had with the bill and the fact that inadequate time was given to completing the review, in the light of experience do you consider that the bill was put into the system far too soon to allow you to do the work that needed to be done?

Alison Gorlov: No, but I am not the person who carried out the original reference and Mr Parry Jones should answer that.

Ashley Parry Jones (LandAspects): So far as the methodology is concerned, we addressed the reference as we thought fit after taking advice from parliamentary agents, my colleague Alison Gorlov and the clerks. The methodology is completely untried in many respects; nobody has ever had to do this before. I do not think that we were premature in attempting to do what we had to do. Someone had to be first and it was left to the Waverley Railway (Scotland) Bill to be the first project to go ahead with this methodology and its guidance and requirements.

On the timing of the introduction of the bill, it is true that there were changes to the scope of the land referencing during the project. I suspect that the committee will hear later about changes that were made to the project in the light of consultation for example. Those changes altered the referencing scope. Nevertheless, we made the best attempts that we could to gather the necessary information and publish it in the book of reference and notices.

Christine May (Central Fife) (Lab): I go back to what Mrs Gorlov said about the brief that the promoter was given, the time that was given for the work and the fact that it could not go as far as the current review has gone. Is there any evidence that you and the promoter discussed doing a much more in-depth examination and review? Is there any correspondence asking for more time or suggesting a better way of doing things?

Ashley Parry Jones: Are you talking about the review that took place back in November?

Christine May: I am talking about the initial work that you did.

Ashley Parry Jones: At the time, we discussed how long we would need to undertake the review and the level of certainty that would result from it. We were happy that we had adequate time and were able to undertake a review that would answer the questions that were being put to us.

The Convener: It seems to me that the initial review was a cursory examination and that that is why you have now had to delve much deeper. In light of experience, do you regret that the initial work was not adequate?

Ashley Parry Jones: I do not think that the work was inadequate—quite the reverse. However, we have now had the opportunity to do a further review. We find ourselves in a peculiar position because the level of scrutiny that the land referencing has had is unusual and, in my experience, quite unique. We have now begun a review, which my colleague Mr Fish is undertaking. It will go into more detail than the original land reference did. The reason why it is able to go beyond the original land reference is that we are reviewing a completed project; we are looking at a final picture rather than at a moveable feast, which is what the original land reference would have considered. The assurances that we gave in November were based on the same solid picture but, given the timescales required, we were confident that the land-referencing methodology had been followed closely and to a satisfactory level. We remain confident that the assurances that we gave the committee back in November were sound.

The Convener: Did the parliamentary agent for the bill follow the same methodology that was applied to the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill, which was promoted before the Waverley Railway (Scotland) Bill?

Alison Gorlov: Although the Stirling-Alloa-Kincardine Railway and Linked Improvements Bill was promoted before the Waverley Railway (Scotland) Bill, the work on the Waverley Railway (Scotland) Bill started some considerable time before the work on the SAK bill. The referencing arrangements were put in place for the first time for the Waverley Railway (Scotland) Bill.

The Convener: So the methodology that was used for the SAK bill was different from that used for the Waverley Railway (Scotland) Bill.

Alison Gorlov: It was no different. The methodology that was used was exactly the same as that which has been used for the bill that we are considering. There was a major difference in the scale, as there was very little land acquisition under the SAK bill and I apprehend that the referencing was a somewhat simpler task. We are talking about a matter of quantity rather than quality. Apart from that, the referencing method and the parameters for affected properties were exactly the same. If a review such as the review that is being carried out on the Waverley project were carried out on the SAK project or, indeed, on any other project, who knows what it would produce?

The Convener: You say that 21 plots have come to light so far. How many people now require to be notified?

Alison Gorlov: To be honest, I am not quite sure. The number could be 39; the reason why I am not sure is that we have identified plots of land that abut. One speculates that the houses that go with those plots of land have at least one owner. As yet, we do not know the identity of all the owners or other parties with an interest, such as tenants; we know the identities of only some of them. We have identified a possible figure of 39, but the total could be a few more.

The Convener: Objectors must be notified and given time before we finish the preliminary stage. Today is our final evidence-taking meeting. Do you think it credible that you are telling the committee at this stage that you are not sure how many people are to be notified of the latest omission?

Alison Gorlov: I certainly do. As the committee has heard, referencing is not a precise science. There is only so much that can be discovered. I have been given details of certain properties, the ownership of which is known in only a few cases. I am not a Scottish property lawyer, but I have discovered that with certain types of land, it is impossible to find out who the owners are on any referencing basis. We have identified an area of ground that might be in common ownership, but it will not be possible to find out who owns it. That is not a referencing task; it would be a task for a property lawyer.

I do not think that I could advise Scottish Borders Council to give the committee an assurance about the percentage accuracy of the reference. It is not possible to do that. All that we can do is say that, on making reasonable inquiries, the reference has produced a certain result. We know that it is not 100 per cent accurate, because that is the way things are—it would be incredible if it were 100 per cent accurate.

The Convener: Given what you have just said and given that we are coming to the end of the preliminary stage, by which time people who are entitled to object need to have been given notice, have you considered withdrawing your bill and starting the process again?

11:00

Alison Gorlov: Certainly not, for several reasons. First, it is not simply a question of withdrawing a bill and submitting the same papers next time round. Everything that has been done would have to be updated. A sword of Damocles would hang over all the people who are threatened with compulsory purchase now for many months longer—I cannot even speculate on how long that would last.

The truth is that any field of human endeavour is the art of the possible. If the Parliament wants 100 per cent accuracy on the part of this or any other promoter, it must be disappointed. I will speak as a lawyer. One is looking for something that will, in the last resort, stand up to judicial scrutiny should any aspect of the promotion be taken to judicial review. It would be for a court to decide whether the promoter had adopted a reasonable method, whether the result of that had been competently implemented and whether such competent implementation resulted in an outcome that was in scale adequate, such that if one identified errors, rejecting what had been done so far would be a disproportionate reaction.

We are firmly of the view that to reject the bill because of what has come to light in the context of this reference would be grossly disproportionate. It would be unfair on the promoter, on all those who have been affected by the bill and on the people in the Borders, who very much need the railway.

Christine May: For the record, do you have confidence in your process and in the evidence that you have given the committee and the Parliament?

Alison Gorlov: Indeed I do—I would not have given the evidence otherwise.

Christine May: Given the errors that we have heard about and your explanation, why should we have confidence in what has been done?

Alison Gorlov: I am sorry; I do not quite follow what you said.

Christine May: We have heard about why errors were made and about a review and we have now discovered more errors. In that situation, why should we be confident that the work has been undertaken as thoroughly as possible?

Alison Gorlov: Either the committee accepts the evidence that we give or it does not. We are speaking as people with experience in the private bill and referencing fields—gosh, that sounds pompous, but it is not meant to. I simply mean to say that people in this room have experience in this field in abundance.

We have confidence in the competence of the work that has been undertaken. We are confident that we are carrying out a review such as never before. I am confident that it is more than likely to unearth further cases in which notice should be served. I am confident of that because that is what will happen. There is always an area of doubt and of human error.

Am I satisfied that the procedure is competent? I am, as are my colleagues and my clients. Either the committee accepts that everything that we have discovered shows that the work has been done competently or it does not.

Christine May: The promoter submitted written evidence for our meeting on 28 February that said that to undertake and report on its review of the referencing process would take about four weeks. Now we hear that that may take another five weeks. That suggests that the problems are significantly greater than first thought. How do you respond to that?

Alison Gorlov: I do not think that problems are the cause. Mr Fish is the person to answer that question.

David Fish (LandAspects): Retrieving the documents from the archives took longer than expected and, after retrieval, the documents needed work to make them suitable for such an in-depth review. It is only once we had gone some way into the exercise that it was possible to estimate more accurately how long the exercise would take to complete.

Christine May: Mrs Gorlov, when I spoke to you the first time you gave evidence, you told me then that you had confidence in the work that had been done initially by professionals, and you were very clear about not intruding in others' professional fields. Do you feel at this stage that you would revise that view in the light of what has happened?

Alison Gorlov: No, I do not. I might, in the light of our experience of Scottish procedures, suggest certain alterations in the methodology. I would undoubtedly—and will in future—get back to the clerks to discuss with them how better to deal with certain categories of property that are caught by the Scottish rules and not by any other, and how best to deal with certain aspects of Scottish property law that are unique to Scotland and which present particular problems that we do not get in the rest of the United Kingdom. However, apart from that, I have no reason to revise my view of referencers in general or LandAspects in particular.

Christine May: Were the people who did the original work experienced in Scottish property law?

Ashley Parry Jones: Some were, but only to the level of working as land referencers. We are not property lawyers, and that is not the requirement. Nevertheless, we obviously have some experience in dealing with such issues from previous projects of this nature.

Christine May: But, to be absolutely clear, not everybody was as familiar with Scottish property law as some members of the team were.

Ashley Parry Jones: That is true, although land referencing does not require an in-depth level of familiarity with Scottish property law.

Christine May: Although it seems from what Mrs Gorlov said that, in this instance, it would have been more useful.

Ashley Parry Jones: I am not sure that that is the case. Even in England and Wales, I am not sure that land referencers would necessarily have to have an in-depth view of property law there. It is not about being a property lawyer.

Alison Gorlov: I wonder whether I might clarify the problem with Scottish property law. I do not want to make too much of it. The referencing task is not a property law task at all. Referencers have to go to various sources and take from those sources the information that is available in them. The problem is that, in the register of sasines, documents rather than individual particulars are registered. So, as I understand it, there is an index that reveals names and another with addresses, and if one goes to the index it will show that an individual is registered as the owner of property at a particular address. However, it will not show property where there is not an address or where there is not a known owner.

I see Ms Smith shaking her head.

Margaret Smith (Edinburgh West) (LD): I worked there for five years, and I think that you are wrong.

Alison Gorlov: Well, may I give the example that has given rise to the problem? There is a piece of common ground at the back of some houses whose ownership was not ascertained. It turns out that the owner of at least one of the houses shares ownership of that ground with unknown others, but the only way in which one can find that title to the land is by reading through the title deeds to his house. I am informed that that is a not unusual arrangement. No doubt, Mr McKie from Anderson Strathearn will be able to help the committee further if they want to hear from anyone today.

The point of the story is that in the register—in the indexes—one will not see any reference to that person owning that land, so a referencer could not ascertain that. The only way in which one could find it out is by reading the title deeds, which is not part of a referencer's job or anywhere within a referencer's expertise. That is not within the scope of a land reference, and it is not what happens elsewhere in the UK.

Margaret Smith: For five years, I worked at the register of sasines, during which time I was involved in complicated land searches, just as you have described. That was about 20 years ago and systems have changed, but the register of sasines has not changed for several centuries. It is a register of parcels of land. Houses are not mentioned particularly, but there are two indexes: one index of parcels of land and a further index of the names of people.

In my experience, it is not unusual for someone to present the register of sasines with a description of a piece of land, wanting to know who owns it. There are two ways in which a searcher can find that information. First, they can ask whether the person knows the names of any of the people who have ever owned that land, to enable them to check the index of names. Secondly, they can ask for a full description of the land, with which it is usually possible to find who has owned the land at some point. The land may well be discovered to be a piece of common land. However, common land will be presumed to have passed through the ownership of a council or something of that order. In five years of doing my job, I never sent anybody away without having given them an answer, although it sometimes took me several weeks to find the information. As I understand it, you should be able to go to the register of sasines and find such information on the basis of land references, not just the names and addresses of people.

The land register has shifted, over the past 25 years, from an index-based system in large, dusty books to a computerised system. However, the computerised system still records all the different documents, title deeds and so on that refer to the land. You are absolutely right that, in every set of title deeds in Scotland, mention will be made of the defining point at which the piece of land broke away from the greater piece of land of which it was a part. So, from everybody's title deeds, you should be able to trace the whole thing back from a small parcel of land to a larger parcel of land and an even larger parcel of land beyond that. That is not necessarily something that someone could do if that was not their profession, but they should be able to find that information if they employed a group of professional searchers.

You have said that there are areas where you have been able to reference the land. I accept that the job of the referencer may be different from the job of trying to identify the owner—that is not the job of the referencer. Can you please tell us whether, in cases in which you are able to identify a parcel of land but not the owner, further work will be carried out by lawyers, searchers or property agents to try to retrieve information from the register of sasines about who the last known owner of the land was?

11:15

Alison Gorlov: I expected to discuss that issue with Mr Cochrane. I am not sure what we ought to do. The promoter is obliged to carry out a reference, but landowners are not obliged to divulge title information and the promoter is not obliged to carry out a title search. My information about the ability to locate pieces of unknown open land is not quite as has been suggested; I have no idea how difficult it is to find out about pieces of

land. However, the lengthy procedure that has just been described is a title search and a reference is not intended to be a title search. A reference is much more about superficial inquiries of the publicly available and obviously available information. Hence, references are based on the valuation roll and the sort of list that has a name and an address.

Bearing that in mind, if I had been asked at the outset whether the promoter should undertake title searches of all the relevant pieces of land, I would have said no. That is not what a promoter is obliged to do. The issue is not about the promoter doing the basic minimum; the promoter has to do what is reasonable and it is not reasonable to carry out title searches for the whole of a railway corridor in advance of land assembly.

If the committee requests a title search, I have no doubt that Scottish Borders Council will undertake one. However, carrying one out would be doing far more than is necessary. There is an overriding reason why that is the case. We should remind ourselves of the purpose of the notices. It is not a question of saying that, just because people are entitled to get a notice, a notice should be served. The important thing is to think about the purpose of serving notices in the first place, which is to alert property owners to the fact that their property may be affected by the bill. Regrettably, there are cases when that has not occurred.

It is fanciful to suppose that there is no other way in which people whose properties back on to the railway can find out that it is proposed that the line be re-created. There has been a great deal of publicity about the bill. Some people who, strictly speaking, were entitled to receive notice may not have received notice. However, given the stage that we have reached, the purpose of the standing orders and the publicity that there has been, it would seem perfectly reasonable and proportionate for the committee to take the view that the promoter ought not to be required to undertake title searches in order to find any and every owner who may have an interest in every plot of land that is affected by the scheme.

Margaret Smith: Okay. Annex G of the "Guidance on Private Bills" refers to

"the persons or classes of persons with an interest in heritable property who require to be notified by the promoter of a Private Bill as follows:

Persons whose interests are … registered in the Sasines Register held by Registers of Scotland; or … registered on the Land Register; or … on the latest version of the valuation roll or … as 'the owner', 'the lessee' or, as the case may be"—

which is the case of an unknown owner—

"'the occupier' of any land or buildings".

Under annex G, the promoter is given a number of options as to how to identify relevant owners. For the sake of argument, let us say that the owner of a piece of property lives outside the country—it is not unknown for that to happen. If the promoter discovers through the referencing process that further work needs to be undertaken to identify the owner but then chooses not to delve into the register of sasines to find out that information, the question what constitutes a reasonable inquiry is open to debate.

If I were the objector, I would feel that it was reasonable for the promoter to go to annex G of the "Guidance on Private Bills" in order to find out where to search for information on property ownership in Scotland. After all, every property in Scotland and every parcel of land is meant to be registered in the register of sasines with the land register of Scotland.

We are talking about searching for information on only a small number of land parcels, as most of them can be dealt with by way of referencing techniques alone. If the searchers look in the register of sasines and they still cannot find the owner, the promoter would be on a stronger wicket in arguing that it had made reasonable inquiries into ownership. What is your interpretation of what is reasonable?

Alison Gorlov: Undoubtedly, that is a matter of what one decides is reasonable, but—I say this so that the committee should be in no doubt—the referencers went to the register of sasines, the land register of Scotland, the valuation roll and a good many other places as well, as Mr Parry Jones can tell you. There is no question of their having ignored any of the registers—they did not—but in going to the register of sasines, they went as far as referencers can go. They did not make full title searches in relation to the plot of land that I described.

It took a property lawyer reading a bundle of registered title deeds to find that the person concerned appeared to have an interest in an uncertain area of one of our plots. That was as far as he could take the matter. The land referencers have looked at the register of sasines and, from the index, have found the registered owners against the particular properties, as you described, where they are registered. They have made other inquiries, knocked on doors and all the things that the committee has previously been told about. They have carried out wide inquiries, which have produced the results about which the committee has been told.

More to the point, whatever one may think of the level of inquiry, that is the level of inquiry that is always employed by LandAspects and other competent land referencers in the United Kingdom and it has been found to be satisfactory. More

than that, the referencers in LandAspects have been complimented on their referencing output, not only in England and Wales but, quite recently, in Scotland on the tram bills. That level of inquiry has been adopted and accepted throughout the United Kingdom. If it is no longer acceptable and the Parliament requires a higher standard, so be it, but, if that is the case, it must be on the basis that promoters know for the future. For the present reference, it seems to me quite wrong that the promoter should be expected to have gone beyond what was accepted as reasonable on all previous occasions.

The Convener: It was you who contacted the committee and said that you had overlooked 130 affected people, which is why consideration of the project was suspended. When you came to us on 28 February, you told us that you had left out somebody in the middle of a block. It was you who did the review, so it is obvious that you were not satisfied with the work that had been carried out, otherwise you would not have carried out the review in the first place. To argue that the committee or the Parliament is asking for a higher standard of proof than applies elsewhere does not stack up, because you seem to be overlooking the fact that it was you who determined to have a review of your processes, which, in turn, has thrown up further problems.

Alison Gorlov: Forgive me, convener, but I think that we are talking about two different things. I was addressing the level to which a referencer should be required to search. The suggestion seemed to be that a referencer ought to undertake full title searches in the register of sasines, with lawyers involved if necessary, and I was simply saying that that level of inquiry goes beyond what has been accepted as reasonable for referencers in the United Kingdom. I am simply saying that, if the Parliament is to require full title searches, promoters need to be told that for the future. For the present, the Waverley Railway (Scotland) Bill's promoter ought not to be expected to have made referencing inquiries above and beyond the standard that has hitherto been accepted as reasonable for the remainder of the United Kingdom.

That was the first issue, but you are asking about a separate issue, which is the standard of the review and why we undertook it. If I may say so, that is a different issue from that of the nature of the searches that were made during the referencing process. We undertook the first review because an error came to light—Mr Parry Jones can tell us how that happened.

Ashley Parry Jones: Various objections were made about certain aspects of the land referencing, which is perfectly normal. Because we wished to understand where the objections were coming from, we identified two omissions. A certain level of interpretation is required in identifying what abuts the limits. In those cases, we decided that we had not erred on the side of caution, as we would have wished, and we therefore decided that the people who were involved—I think that there were 120—ought to receive notice. Of course, we made that known to the committee immediately. As it turned out, some of the landowners who received notice following the re-referencing pointed out to us that in their opinion they did not qualify for a notice. Interpretation is involved and we tried to err on the side of caution at all times. Where we erred on the side of caution erroneously, that is now perceived as an error, but we believe that we have been prudent in our work and have achieved the standard that anybody in the industry would expect.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): In response to an earlier question, Alison Gorlov took exception to my description of the level of omissions that we found out about a month ago as altogether unsatisfactory—she did not appear to believe that the situation was unsatisfactory. We had about five months of delay because about 130 people were not notified. After that five-month period, at our meeting on 28 February, we were told that yet another person had not been notified. At that time, the committee expressed its concern that other people might be in the pipeline. Four weeks later, we are now told that 39, or possibly 40, more people have not been notified and there is apparently no way of guaranteeing that more people will not be discovered. If the situation is not altogether unsatisfactory, how would Alison Gorlov describe it?

Alison Gorlov: Well, Mr Brocklebank, I would describe it as unsatisfactory, but what is unsatisfactory is that a number of people who are entitled to notice did not get it, which is not the same as saying that the referencing process was unsatisfactory. Objectively speaking, one would of course like everybody who is entitled to notice to receive it—that is the perfect world to which we all aspire. However, the fact that perfection was not achieved does not mean that the referencing was highly unsatisfactory. The referencing was carried out on a sound basis and, we believe, produced a sound result. Undoubtedly, that sound result contained errors, some of which have come to light—the world being what it is, I should be surprised if there were not more errors. The fact that there were errors and that people did not receive notice is unsatisfactory, but it does not follow that the referencing that gave rise to the errors was unsatisfactory.

The referencing would have been unsatisfactory if the way in which it had been carried out

betrayed incompetence, but it did not—it showed a reasonable level of error, given the circumstances that the committee has heard about. There will always be errors; the only question for the committee is whether the level of errors in this case was reasonable. Given every comparator that we can think of and every analysis of the work that has been carried out thus far, we can say that it was.

11:30

Mr Brocklebank: With respect, you sound like a surgeon who claims to have carried out a brilliant operation and to have gone through all the technical procedures absolutely correctly, but whose patient still died because he had a weak heart. I find it difficult to accept that, despite the various caveats that you have introduced and the various claims that you have made for your referencing process, you still admit that you do not know whether there are any more omissions and that, by the nature of things, you will probably not be able to identify some objectors out there.

Perhaps it would be sensible to take the matter a little further. Because the issue is causing so many delays, perhaps you can get round the problem by serving notices on these people as soon as you discover them. Is that the current procedure?

Alison Gorlov: That is what we have done up to and including this lady—I hesitate to mention her name, because she did not like having it mentioned before. We have not served notices on the discoveries that have been made since, because, according to the procedures, before we can do so we have to discuss with the clerks what to say in them. For example, they have to state the objection period. My understanding is that we have been asked to clear with the clerks how we deal with that matter.

I have not arranged for notices to be served on the batch that has recently come to light because that discussion with the clerks has not been completed. Perhaps I have misunderstood the position, but I understood from what Mr Cochrane said that the instant serving of notices was not considered necessary or desirable because of the on-going review. If I have got that wrong or if views have changed, I am sure that I will be told and that notices will then be served straight away.

Mr Brocklebank: You will be aware that what has happened could result in delays to the bill's progress, because the people involved must be notified and given as much notice to object as other objectors have had. We are looking at serious implications for the progress of the bill.

Alison Gorlov: Indeed we are. That is understood. However, that is nature of the procedures. The procedures are all that we have and all we can do is utilise them to the best of our ability. As far as the referencing process is concerned, the people involved undertake reasonable inquiries and operate competently. Those are the only criteria under which any of us can operate. The fact that the outcome might not be 100 per cent satisfactory is, as I have said, no more and no less than a law of nature. It will always happen.

I will make one further comment and then shut up. I cannot emphasise strongly enough that the reference that we are talking about has been examined in a unique way. Mr Gannon, who has more than 30 years' experience, told me that he was aware of only one case in which a review was made in-house by his company and I have no idea whether that review equates to the present one. Between us, we have more than 60 years' experience in the business and are unaware of any comparable review. We can only speculate, but I am positive—and I might have said this before—that, if any other reference that had been undertaken were subjected to this level of review, lots of errors would be found. Other parliamentary committees have recently had occasion to examine references of private bills and have not been similarly concerned. However, without wishing to cast any doubt on the veracity of those references, I am willing to bet that any examination would reveal all sorts of unknowns, uncertainties and errors. Any reference will, because that is the nature of the referencing task.

The Convener: I should point out to Mrs Gorlov and the rest of the panel that, according to the private bill procedure in the Scottish Parliament, we do not require the promoter to reference. It is its decision to conduct a land reference. However, under our procedures, we require the promoter to notify people who are entitled to be notified. There are a number of ways in which that can be done. It need not stand or fall on land referencing. It was the promoter's decision to take that approach and it is for the promoter to indicate whether it considers that the referencing process that was undertaken was the best way of ensuring that due notification was given to those who were entitled to it. Would you like to comment on that point?

Alison Gorlov: I certainly would. The procedures do not require landowners to co-operate; no one has to tell us anything. The only thing that a promoter knows is that it must serve notice on people with a certain entitlement. In order to discover who those people are, the promoter must make such inquiries as it can. The promoter must prepare what the Scottish Parliament's rules call a book of reference, which is the output from taking a reference. The exercise of ascertaining who holds land interests in given areas is called referencing. The rules do not say

that we need to reference; they say that we need to prepare a book of reference so that we can serve notice on certain people. For that reason, we are obliged to carry out a reference. Whatever one cares to call the process, the exercise of ascertaining land ownership without having the legal powers to require people to divulge that information is referencing.

Gordon Jackson (Glasgow Govan) (Lab): You have said repeatedly that there has not been this level of scrutiny in any process in the past. If I did not know better, I would almost think that you were blaming us for doing our job properly. Are you suggesting that there should not be this level of scrutiny? Is there some problem with that?

Alison Gorlov: I am not for one moment suggesting anything of the sort. This level of scrutiny results in the job being done twice. If one does a job twice, one hopes that it will be done better the second time round. However, in no other procedure of which I am aware is it the expectation that a job should have to be done twice. It is expected merely that the job should be done competently the first time round. We are doing the job twice to prove to the Parliament and to ourselves that the job was done competently the first time. The committee has heard that we believe that, in this case, a competent job was done. No one is blaming the committee for being concerned that the review should be carried out. However, the procedures allow for the job to be done once. That is the basis on which infrastructure schemes are promoted throughout the United Kingdom.

Gordon Jackson: You talk about a unique level of scrutiny. Are we carrying out too much scrutiny? Was the normal level of scrutiny that was carried out in the past better? Are we being too meticulous? I am trying to work out what you mean when you say that never in human history has there been this level of scrutiny.

Alison Gorlov: In the normal course of events, a reference is carried out, in the way that has been described to the committee several times by LandAspects. Notices are served on the basis of that reference. In every other type of infrastructure promotion procedure in the United Kingdom, the promotion goes on from there and there is no further reference to the referencing, as it were. The notices are served, the objection period runs and the referencing issue is closed off. In relation to private bills at Westminster and the old Scottish provisional orders, there was a proceeding for closing off the issue of whether all the necessary notices had been served.

Gordon Jackson: That seems to suggest that until now the approach has been to do the reference and close it off. Other things that you have said indicate that, inevitably, many people who should have been notified were not, but that that was just too bad. People said, "That is life," and moved on.

Alison Gorlov: As a matter of fact, yes. To be frank, there is an element of practicality in all this. The object of the exercise is to serve people with notices, give them a chance to object, publicise the proposed legislation so that everybody knows that it exists, have the inquiry, parliamentary committee hearings or whatever and, in that way, advance the procedure.

Gordon Jackson: With the greatest respect, that is not what you are saying. You are not saying that the object of the exercise is to make sure that everyone who should be notified is notified; you are saying that the object of the exercise is to have a reference that you know will miss out a lot of people—and, as you agreed, that is life. The object is to put something in place that will look okay, but which does not do what it is meant to do.

Alison Gorlov: I am not saying that at all. Let me ignore the reference for the moment and consider the whole procedure. I am saying that the object is to have notices served on affected people, to hold an inquiry into the proposed scheme and to take a decision on that inquiry. That is what one wants to achieve from beginning to end. In order to achieve each stage, one has to undertake certain tasks, of which referencing is one. One must undertake those tasks diligently and competently. All that I am saying is that that was done the first time round and other procedures allow one to move on to the next stage. I am not criticising; I am simply observing that the procedure on this occasion requires the job to be done more than once and the remaining parts of the promotion procedures to wait until the referencing job is redone.

Gordon Jackson: To be fair to us, we do not demand that the referencing is done more than once; we just want it done right, which is not quite the same thing. You seem to be saying that one normally does the referencing once and then one moves on, but the rest of your evidence seems to suggest that it is inevitable that quite a lot of people will be missed—you say that what you missed in this exercise is what normally happens. We might not consider it satisfactory to take the approach that one just moves on knowing that the system will miss out a lot of people. That seems to be a bit of a sham. Have I got it wrong? Is that not what you are suggesting?

Alison Gorlov: It is not what I am suggesting. It is all a matter of degree. If the job is done incompetently, it would be quite wrong to move on. If the job is done competently, one should move on—otherwise one will never move on because one will never achieve perfection.

Gordon Jackson: I agree.

Alison Gorlov: The object of the exercise is to get the job done as well as it can be done on the basis of reasonable inquiry—that is what the standing orders and the determination require and it is absolutely right that they should do so.

We are confirming to the committee today that the job was done competently. Errors will be thrown up because, however competent the job, there will be errors. However competently one does anything, one can never be sure of achieving 100 per cent accuracy. I suggest to the committee that it needs to be satisfied not that the job was 100 per cent accurate, because we tell you honestly that that cannot be achieved, but that the job was competent. Our evidence is that it was. We believe that the review, when it is complete, will confirm that the reference was competent, although it will reveal errors.

We are also saying that, in judging levels of competence, the promoter must be expected to comply with the levels of competence and reasonableness that are accepted elsewhere in the United Kingdom—and in Scotland—in relation to other forms of infrastructure authorisation procedure. As its procedures become more embedded, the Parliament might decide to impose some other, higher level. That is entirely up to the Parliament and, indeed, this committee. However, in the judging of whether, hitherto, this promoter has been competent, it would not be right for the promoter to be expected to have achieved a level of competence over and above that which is generally achieved and acceptable in any other form of proceeding, for the reason that no higher level has ever been sought by this Parliament.

If we had received a direction that we ought to do certain things, and if we had not done those things, the promoter would be at fault and would not have achieved the requisite level of competence. As no such direction was given—understandably so—the committee ought to expect the level of competence that is generally acceptable in this country. We believe that LandAspects has achieved that.

11:45

Gordon Jackson: You keep talking about the reference not being 100 per cent accurate. I do not know about my colleagues, but I would not mind if the reference was not 100 per cent accurate. We all expect a level of error, because we are all human. However, to say that the reference is not 100 per cent suggests that it is near it. It is not. As we have heard, large numbers of people were not notified.

If we had not done a review and you had not come up with the figure of 41 or 39 people, would it have been okay not to have notified those people? Would that have been within an acceptable level of competence?

Alison Gorlov: I think that it would. One can do an awful lot of things with numbers. It is important for the committee to be aware why numbers of people do not really equate to numbers of errors.

If a property is entitled to receive notice, the result may not be just one notice. A plot of land could have one owner and occupier, and that plot would receive one notice. Alternatively, the same plot of land may have three or four joint owners and another five or six occupiers, resulting in—let us say—10 notices. However, it would have been just one error that resulted in those notices not being served. Now, does one call that an error of one, four or 10? I should have said that it was really one, because the error was probably just the missing of that plot, or perhaps getting the plot but missing some of the people. I do not know the fairest way of measuring that.

Earlier, I said that we had identified 21 plots of land in relation to which there had been some glitch. There were three plots of land within the limits where it looks as if not all the notices were served that should have been served. However, in the other cases, notices may not have been served on the people in land abutting the limits—I say "may" advisedly, because it is not clear in every case either who the people are or whether the land abuts. It is actually quite difficult to find out who is entitled to receive notice in respect of land abutting the limits.

When you talk about levels of error, I am not sure which figures one needs to pull from which bunch of different actions. I do not know how to produce the statistics. That is what makes it incredibly difficult to compare one infrastructure project with another. Mr Gannon will be able to confirm that when he addresses the committee later.

Margaret Smith: You say that clear instruction needs to have been given. A clear instruction was given to the promoter that people require and are entitled to be notified. The job at hand was therefore to notify people who are affected by this £155 million project.

I will take you back to your responses to questions that I asked you earlier. I think that you misrepresented one of the questions that I asked you. In that question, I accepted that it might not be the job of referencers to take the inquiry beyond a certain point but it is undoubtedly, in my mind, the job of the promoter—whether through referencers, property agents, lawyers or whoever—to fulfil that clear instruction to notify the people who can be notified in any way.

Earlier, you said that you did not ignore the register of sasines—although a lot of what you

were saying sounded quite contradictory—but that no full title searches had been done. Given that, in this £150 million project, we are talking about a few parcels of land whose owners you were unable to identify during the referencing period, why have you not done full title searches, which would cost only a few hundred pounds?

Alison Gorlov: First, let me say that if I misrepresented anything that you said, it was entirely unintentional.

Cost had nothing to do with it. The rules require notices to be served on the people mentioned in the determination. In order to ascertain who those people are, the Waverley promoter undertook a reference. If the Parliament wishes, it can specify how far a promoter should go in that regard.

While I entirely take the point that the rules say who is entitled to receive notice, I put it to the committee that it was reasonable for the Waverley line promoter to go about ascertaining who those people were in the way that is invariably followed in such infrastructure projects. The Waverley line promoter undertook the sort of inquiries to ascertain who was entitled to notice that are undertaken all the time in relation to infrastructure projects throughout the United Kingdom. It may be that those inquiries do not produce the result that the Parliament wishes, and it is the case that they fall short of full title searches. It may be that the Parliament will make known its view that it expects 100 per cent coverage or, at least, much deeper coverage than a reference will give. All those things might be true, but I suggest that the Waverley promoter can be required to do only that which is reasonable. In the context of a requirement that is not, on the face of it, different from the requirements to serve notices under other procedures, it is right for the Waverley promoter to go about the task in the same way as if the task were being undertaken south of the border under the Transport and Works Act 1992, north of the border—in relation to harbours—under the Harbours Act 1964 or anywhere in the country under any of the acts that authorise the compulsory purchase of land. The methodology that was used was, therefore, the same that would be used in relation to the building of a motorway, a harbour, a railway south of the border and so on. All those projects would be referenced in precisely the same way as the way in which the Waverley line was referenced. If the Parliament wishes another route to be taken, that is absolutely fine, but it is quite reasonable for a promoter to suppose that the way in which he ascertains land ownership details is the same as it would be if the exercise were being undertaken anywhere else in the UK.

Margaret Smith: Do you accept that it is reasonable for the promoter to go to annex G of the "Guidance on Private Bills", which says clearly that the people who have a right to be notified are

"Persons whose interests are … registered in the Sasines Register held by Registers of Scotland; or … registered on the Land Register; or … on the … valuation roll or … as … 'the occupier'"?

Given that annex G says that in black and white, is it not reasonable to examine the register of sasines, not in a cursory way, but in an effort to do whatever is necessary to identify somebody whose heritable property interests are involved in the project? The land register has 100 per cent coverage of land in Scotland. The rest of the United Kingdom may not have that, but Scotland does.

Alison Gorlov: I profess no expertise in what the registers look like in this country, but I am told that the land register covers little yet, and certainly very little in the Borders.

Margaret Smith: No—it covers everything.

Alison Gorlov: The register of sasines has wide geographical coverage, but it is so assembled as to make searching a specialist and rather difficult task that is not comparable—

Margaret Smith: The task is specialist and difficult and professionals who require a fee are needed to do it. That is no different from the work of referencers, parliamentary agents or anyone else. I am saying not that the work is not difficult, but that perhaps it should have been done.

Alison Gorlov: The task is legal; it is not the same as referencing what is on the face of a register.

Margaret Smith: I have not said that it is.

Alison Gorlov: I am sorry. You mentioned the rest of the country. In England and Wales, coverage for land registration in the equivalent of the Scottish land register is now 100 per cent. That register shows names and addresses and allows plots to be searched in a way that I am advised is much simpler. One can simply look on a list where all the information is, without the need to delve into title deeds. That is an aside.

The general question that you asked was whether a person who is entitled to notice under the determination was entitled to expect full legal title searches. I think that the answer is no. Unless the Parliament made it clear that that was what people wanted when the bill's promoter was undertaking the Waverley reference, the answer must be no, because the determination is equivalent to many similar requirements throughout the country. The people who are entitled to receive notices under those requirements have exactly the same entitlement as is in annex G. Rightly or wrongly, the work to ascertain who those people are is in practice

exactly the exercise that was undertaken for the Waverley promoter.

The committee might not be happy with that and the Parliament may wish its view to be known for the future that another level of scrutiny should apply, but the fact is that requirements that are expressed in similar terms to those in annex G are accepted as having been complied with—in fact, they are complied with—by the level of scrutiny that was undertaken on the original Waverley reference. That level applies not just south of the border but here in Scotland with the register of sasines and all the difficulties that it has produced.

Infrastructure projects—regrettably, not enough of them—have been undertaken in Scotland and references have operated north of the border for a long time. Throughout that time, exactly the same procedures have been used as were used for the Waverley reference. If promoters in Scotland are in future to be held to a higher standard, that is a policy matter. I have no criticisms—if that is what somebody wants, it is not for me to say yea or nay. However, if that standard is to be imposed on promoters, it cannot reasonably be imposed retrospectively on the Waverley promoter.

Christine May: I am not a lawyer and I have no experience of acting in a legal capacity, but I am a representative of the public. Do you agree that in such circumstances, the public would expect as near as possible to 100 per cent accuracy?

Alison Gorlov: Yes, of course.

Christine May: Do you also accept that the public would be right to expect that those who are doing the work take all reasonable steps to get as near to that 100 per cent as is possible, including having sufficient knowledge of Scottish property law as to allow them to do that job reasonably?

12:00

Alison Gorlov: I would certainly expect the job to be done reasonably, but I would have little idea of what "reasonable" meant. I have no doubt at all that I would expect the work to be 100 per cent. If my property were involved, I would be remarkably unsympathetic to the argument that 100 per cent is unachievable.

Christine May: Given that the first fairly cursory and relatively superficial review threw up, as I think you accepted, 130-odd errors, would you still say that what was done was done as thoroughly as it might have been, given the constraints and usual practice? I paraphrase slightly but that seems to be what you are saying. Are you satisfied that the work was adequate?

Alison Gorlov: Are you asking for my view as a lay person?

Christine May: No, I am asking for your professional view.

Alison Gorlov: As I said earlier this morning, I am satisfied. I will not disguise that when the matter came to light I was angry. One does not like to find that there have been errors in anything with which one is involved, but the more that I have discussed the matter with LandAspects—I emphasise that I have not dealt with the referencing at first hand—the more I am convinced that the job that was done was competent, errors and all. Errors are terribly regrettable, but I think that, overall, a competent job was done.

Christine May: Would you accept that, as lay people, the public and I might take a different view?

Alison Gorlov: I would not be at all surprised if the public took a different view. It sounds awfully pompous to say, "I know and they don't", so I will not say that, but the truth of the matter is that there is a level to which one can go. I know that anything short of 100 per cent will not be acceptable to the lay public—I understand that. All that I am saying is that in whatever gets flung at the public in the real world, 100 per cent is not achievable and it is never achieved.

Christine May: I was going to make a personal comment, but I will not do so.

The Convener: As committee members have asked all their questions, I thank you very much for coming to give evidence.

The committee is extremely concerned about the further difficulties, following the errors that were discovered last year. As a committee, we need to reflect seriously on the promoter's competence in that regard. That will be a matter of comment in our report to the Parliament. We require the promoter's final report on its exercise by 18 April, and we will return to the failings at a special meeting in Edinburgh during the last week in April.

Any further notifications must be served immediately, along with an invitation to comment on the accompanying documents. We also require the promoter to look again at the stated methodology. We want assurances that the review is more than mere paper shuffling and that any missing reference documents will be sourced. I must warn now that any further mistakes that are discovered in the remainder of the review are likely to cause a three-month delay, given the summer recess. A similar delay would be likely to arise from a failure to provide the report that we require. The committee will consider the whole situation again at our meeting in late April.

I welcome to the meeting John Gannon, who is director of TerraQuest Solutions plc. I understand

that you wish to make a short opening statement, Mr Gannon.

John Gannon (TerraQuest Solutions plc): I will, if I may.

Our brief was to provide an independent view on whether the method that LandAspects proposes for carrying out a comprehensive examination of referencing outputs would be adequate to identify all parties who were notifiable and to ensure that they received the required notification. We were not asked to review the referencing specification; the methods used to gather and prepare the referencing outputs; or, indeed, the outputs themselves. As a result, our conclusions are subject to the adequacy of the underlying specification, the methods and the outputs that have been produced.

We have concluded that the method proposed by LandAspects will allow it to be proved that all land that is within or that abuts limits has been included in a land ownership schedule. It will also make it possible to prove that the results of all inquiries and searches made in the course of referencing and contained in the referencing files are recorded in that schedule and that the content of the files complies with the referencing method that LandAspects adopts. The end result will allow an examination that will ensure that all parties in the land ownership schedule have received notice. However, the method cannot guarantee the identification of all errors and omissions that arise from erroneous or incomplete information from landowners; loss of documents; and human error in making and processing inquiry results.

At this stage, we cannot comment on the quality of the referencing outputs, because we have yet to complete a comprehensive examination of them. However, even when those investigations are complete, it will still be difficult to evaluate quality by comparing it with other projects, because no comparable figures are available. The quality of land referencing cannot be known until the results of the land acquisition process have been received. At the moment, those figures are not available. Moreover, as each project has its own characteristics, direct comparison with any stage of a project might be invalid.

The Convener: Thank you very much, Mr Gannon. We have a few questions for you.

Your submission does not appear to include reference three, which concerns a telephone conversation with David Fish on 24 February, and reference four, which concerns a meeting with Mr Fish at the LandAspects office on 7 March 2004. What is in those references?

John Gannon: They are the source of the information that was used to carry out the review. At the outset, I had a lengthy telephone conversation with David Fish to gain an understanding of what was behind the written method statement. I then visited the LandAspects offices to see what was being done and to ensure that I thoroughly understood their method.

The Convener: Your report states:

"The method proposed cannot be guaranteed to identify errors and omissions which may arise as a result of … Loss of referencing enquiry documents (arising from human error)"

and

"Human error in making or processing enquiries."

In your review, did you find that the loss of referencing inquiry documents and human error in making or processing inquiries had caused some of the failures so far and, if so, is that why it cannot be guaranteed that failures will not occur in future?

John Gannon: No. That was a more general comment. It is difficult to prove a negative. Referencing is a manual, clerical procedure that relies entirely on human beings putting the right piece of paper in the right place, extracting information from documents and recording it in the way that is required for the production of a book of reference, plans and notices. In any human procedure, documents can be lost. While the quality management methods that were applied to the processes would normally pick up that type of problem, we cannot guarantee that that type of problem will be picked up. However, the incidence of errors should be low.

Erroneous information that landowners have provided might be picked up if it conflicts with other information that is available, but it is always possible that erroneous information will slip through, because one cannot tell that the information is wrong.

The Convener: What concerns do you have, following your review of the LandAspects method statement?

John Gannon: I have discussed the method statement in detail with David Fish and considered what is being done. It will be possible to prove what I said it will be possible to prove—that is the administrative aspect of the job. The only additional concern about the method is about the expectation of what it can produce. We are talking about assessing or improving the quality of a human process by carrying out human inspection. One expects that human inspection will have the same potential human error built into it as the original process has, because it is always possible that the human being who inspects the work will miss something that the person who did the work missed. That is an absolute fact.

Because of the nature of the land referencing process, it is not possible to apply automated

checks. The process can be supported with clear documentation, such as clearly marked-up plans, but human beings still have to look at the set of plans and decide whether anything has been missed, whether every piece of land within the limits of deviation is allocated to a property and whether all abutting properties are included in the schedule. Methods can be put in place to support the human beings who make those decisions, but it cannot be guaranteed that they will not miss something, although carrying out a number of iterations will obviously improve the likelihood that nothing has been missed.

Christine May: As a fairly ordinary member of the public, I am struggling to come to terms with what seems to be a dismissal of our expectation of as near as possible to 100 per cent accuracy from professional people who are employed to do a professional job. We are concerned that, despite the fact that the limits of deviation in the referencing process are significant, that appears to be okay. Do you share my feeling?

12:15

John Gannon: I expect that your concerns would be shared by anyone. The referencing process is intended to identify all parties who have a notifiable interest and to ensure that they receive the required notification. It is a reality that that is not always achieved. The reasons for that are human error and organisational error.

Christine May: We have just heard that, with a little more effort, some significant errors were found, but I do not hear you saying that the industry—for want of a better word—is looking to apply the lessons that have been learned. Do you have any concerns about what you have heard this morning?

John Gannon: I always have concerns when I hear that there are errors in any work that has been done by our firm or by other firms in the industry. The fact that an accuracy rate of 100 per cent is not achievable does not mean to say that a rate of approaching 100 per cent cannot be achieved. In its best work, TerraQuest has probably almost hit the target of 100 per cent accuracy; in its worst work, we have fallen short of that, for a mixture of reasons.

The primary, underlying reason has always been that our management systems have not managed to deal with the unpredictable occurrences that have arisen during a project. The fact that different things can happen at different stages of a project makes the referencer's work more complex. There can be an unanticipated increase in the scale of a project or changes in specification. Any organisation must be capable of managing such changes, but we do not always do that too well. When that happens, we have to backtrack and put in place corrective actions to ameliorate the problems.

At the same time as implementing corrective actions, we need to think about taking preventive actions and learning the lessons, so that when we are confronted by similar situations in future, we can respond better. That does not mean to say that we will be able to respond perfectly.

Christine May: I will ask you to apply that analysis to the current situation. Do you think that, in the present case, the limits of deviation are within tolerable bounds?

John Gannon: I cannot comment on that until the results of the review have been completed. A number of figures have been bandied about today. Without examining the root cause of all the errors and checking that they were indeed errors rather than the result of the application at this stage of a more rigorous interpretation of the situation than has been applied in the past, it would be difficult to comment.

Christine May: I think that you would agree that, from where we sit, the present interpretation is not unreasonable.

John Gannon: I would not agree that it is not unreasonable.

Christine May: You also said that when mistakes are found, you try to learn from them and consider taking corrective action. Have you seen any evidence that that philosophy has been applied in this case?

John Gannon: The method statement that has been put together is a thorough method statement. The people who are applying themselves to executing that method appear to be from senior levels within LandAspects. The people I met while I was carrying out my review appeared to be of the right quality to do the job. When a problem arises, it is always the case that the more senior management of the company becomes involved because something has gone wrong and it takes more senior involvement to sort that out. My observation so far is that the problems that have arisen have led to this comprehensive examination of the referencing outputs, which should mean that, by the time the process is complete, all the parties that could be identified as being notifiable will have been notified and will have had notice served on them.

Christine May: I take it that the answer to my question is no.

John Gannon: That was a very long response.

Christine May: Yes, and I asked if you had seen any evidence that behaviour had changed and lessons had been learned.

John Gannon: And the answer was yes.

Christine May: Was it? Can you justify that other than by saying that senior people have done a lot of running about? I would expect that, but what else has happened?

John Gannon: I have seen the process that is being carried out to check that the work has been done in accordance with the method, that the results of that work appear in the schedule and that checks are undertaken to ensure that the people who are in the schedule will receive notice.

Christine May: Do you get the feeling that that is the sort of rigorous approach that will be taken in future?

John Gannon: The review will affect not only the approach of LandAspects to future work, but ours.

The Convener: Thank you for coming, Mr Gannon.

I inform members of the public that we will now take our next panel of witnesses. We will then break for lunch and come back to ask questions. I welcome Ron Street, Berend Meijer, Dr David Wyllie, Robin Bull and George Baillie. Good afternoon, gentlemen. I understand that David Wyllie wants to make a short opening statement.

Dr David Wyllie: Thank you for inviting us here today. The committee has now heard the deliberations of the many public and professional bodies that are supporting the promoter on the general principles of the bill. Some of those bodies have used a level of supposition in their arguments that we do not believe is quantifiable or justified. The implementation of the legislation will affect many groups of people. We submit that the impact and loss for some groups have been given scant cognisance. We dispute the fairness and objectivity of the processes used to demonstrate the compliance of the bill and its accompanying documents. The failures on which we are here to give evidence can be split into the three areas of consultation, technical process and public service standards.

None of us here today agrees that the level of consultation has been acceptable. Although several meetings that the public could attend were held in the run-up to the introduction of the bill, no personal notifications of such meetings were sent to individuals who would be severely affected by the reinstatement of the railway. Affected groups were given no reports or summaries of the public meetings and no details of action points resulting from them. In general, communication with the project has been found to be painstakingly slow, with completely inadequate completion—indeed, non-completion—of agreed action points.

The same can be said about the promoter's responses to objectors' comments. The promoter has been selective in replying to some comments and ignoring others. The general impression that one gets is that difficult issues have carefully been left untouched.

The committee is all too aware that the notification process has been incomplete. To the best of our knowledge, we are aware of two additional properties that should have been notified and have not been. The sole basis for receiving formal notification was that a property abutted the proposed route, which excludes other individuals who would be severely affected.

The inadequacy of the maps and referencing used by the promoter is demonstrated in the environmental statement, which refers to a property that was demolished more than 30 years ago. At times, the basis for referencing land and property is unclear and difficult to follow.

Each of us can give examples of varied and disparate responses on the issue of consultation about compensation.

I turn to the technical process. The operational noise assessment has been taken from planning advice notice 56. That is a poor basis for the assessment, because PAN 56 states that outer limits should be lowered for projects in which a new noise source is introduced in existing residential areas. In particular, the 82dB limit for peak noise is questionable, to say the least. It should also be seen in the light of the World Health Organisation's guidelines for community noise, which indicate that sleep disturbance starts at 57dB. There has been minimal assessment of vibration.

My final point concerns public service standards. Let us be quite clear—parliamentary bills concern people and society. No group of individuals should be unfairly treated and suffer personal loss solely to trim the projected costs of a bill to meet a completely unrealistic budget. That has occurred with the Waverley Railway (Scotland) Bill. The witnesses on this panel represent a group of people on whose lifestyle and assets the bill as it stands has impacted and will impact grossly. Some examples of the proposed mitigation or compulsory purchase boundaries stretch credulity to its limits. The merits of the bill per se have been investigated exhaustively by the committee at previous meetings. Consultation, processes and compensation aspects of the bill are also prerequisites for meeting bill submission standards. The bill fails to meet those standards.

The Convener: Thank you, Dr Wyllie. As I said earlier, we will have a break for lunch, which will last for 45 minutes. When we resume, we will put questions to all members of the panel.

12:27

Meeting suspended.

13:15

On resuming—

The Convener: I welcome again our panel of witnesses, Ron Street, Berend Meijer, Dr David Wyllie, Robin Bull and George Baillie. Dr Wyllie gave a short opening statement before lunch, and we will now ask questions of him.

Before we begin our questioning, I will give the committee an update. Before lunch, I said that we expected the promoter to complete the review and hand it to us by 18 April, to allow the committee time to consider it. Strong representations were made to the clerk at lunch time that the four weeks that the committee suggested were not adequate. In the circumstances, I am prepared to extend that period to 25 April. I sincerely hope that the review will be completed by then.

You have talked about the quality of consultation by the promoter. Has that improved at all since the project was first announced?

Dr Wyllie: No, I do not think that it has improved at all. Some of the panel members can speak of recently having had difficulties in arranging meetings with the promoter and with the time that it takes the promoter to respond if questions are raised at those meetings or if action points are set. We seem to have been chasing up the promoter for a good part of three years to try to get responses. Before the bill was introduced, we held some preliminary meetings with the promoter, but we have always been the ones who have done the chasing. It would be a relief to get information proactively from the promoter. It has been incredibly difficult.

The Convener: Is that still the situation?

George Baillie: We have now seen a copy of a drawing from Environmental Resources Management Ltd that shows mitigation levels for specific areas. In the specific area that I have been looking at, there is a scheme of approximately 30 houses. The drawing shows that scheme in a completely different area from where it should be, yet that drawing is dated October 2004. That is a relatively recent example that shows that the area has not been looked at adequately.

The Convener: Do you think that it was possible for the promoter to consult more effectively, so that more people came on board in favour of the project? Do you think that the reluctance to consult or engage has harmed the project? Had you been consulted at an early stage and been kept involved in the plans, would you perhaps have been less critical of the project?

Dr Wyllie: I do not want to go into details. We held meetings with the promoter in June 2002, before the bill was introduced. The promoter was very slow in addressing the action points from those meetings. When the bill and its supporting documents, including the environmental statement, were introduced to the Parliament, no mention was made of our particular property, although the promoter had been in that property. The issues were not addressed in the environmental statement. I do not want to go into details, but we tried to consult the promoter and its action following that was, from our perspective, non-existent.

Robin Bull: I would like to amplify that statement. I have been trying to engage the promoter since March 1998, when I tried to engage Scottish Borders Council in dialogue on the structure plan. Throughout 1998, 1999, 2000 and 2001, I submitted a series of letters to Scottish Borders Council and to the then Scottish Office transport steering committee on the impact of the bill, with very limited response from Scottish Borders Council.

The Convener: Can you talk briefly about your general concerns about the plans that have been submitted to you by the promoter?

Dr Wyllie: Do you mean specific details of the plan or the plan for the railway from Tweedbank to Edinburgh? What do you mean by the plans that were submitted to us? I am not sure that we have necessarily received a plan. We have taken off the website indications of the route and where it would affect our property. The promoter did bring maps, on an extremely small scale, to indicate the route. Even recently, the promoter was using scale maps of 1:1250 to take measurements from. That is the level of plan that we have had.

The Convener: That is specifically the point that I am asking about. I am asking about the plans themselves. Are you telling us that you had to go to the website to get information on the plans and that they were very small scale? Is that all that you got from the promoter?

George Baillie: All the plans that we have seen have been at the local library. We have had to go there first of all to read through the environmental statement to understand how the whole thing has been cross-referenced, and then to take out the plans for our area. That has been the only way in which we have been able to see what is actually happening in our area. All the information that we have looked at to date has been gained mainly off the internet and off the website.

The Convener: Dr Wyllie talked about the small scale of the plans themselves. Has the scale of the plans thrown up specific problems in identifying areas?

Dr Wyllie: With a small-scale map, there is obviously a degree of error associated with taking measurements. All of us are in properties that abut the railway at short distances of several metres. An error of a millimetre on a map, which is about the width of a pencil line, represents 1.25m. That may not seem a lot, but it is a lot when we are talking about the distances that are involved with respect to our properties.

George Baillie: I have a small-scale map that exemplifies some of the issues that we have. Perhaps the committee members would like to have a look at it later on.

Margaret Smith: I would like to clarify a point about consultation. You say that you have had meetings with the promoter. Have those meetings always been at your request and have they been held on what might be termed an ad hoc basis, or have any of you had on-going consultation? For example, have people in a specific area had regular meetings with the promoters where there have been agendas, minutes and so on, or have meetings just been ad hoc?

Berend Meijer: I can give you some background on our situation. We started communicating with the project group in 2002, and it took us about a year to get a first meeting arranged. That was a meeting that gave us a very broad outline of the project, which I think should have been presented at a large public meeting, rather than at small meetings in people's houses. After that, we exchanged letters and tried to get more detailed information, particularly about noise in our case. It took us until January this year to get a second meeting with the noise consultant, at which we went through a number of our concerns. However, a number of questions remain unanswered from the meeting. Although there were meetings, they were definitely not held on a regular timescale.

Robin Bull: If I may, I will add something. In February 2004, I had a meeting with the consultation manager. It took five e-mails to get a response, after which a meeting date was set up. The meeting, which was held at my house in Heriot, lasted two and a half hours. I am still waiting for the actions from that meeting to be completed.

Margaret Smith: Thank you for that. I will move on to another of the issues that Berend Meijer highlighted. Will you clarify your concerns about how the environmental statement was produced in respect of noise impacts? I am particularly interested in your assertion that more stringent noise assessment criteria such as the World Health Organisation guidelines for community noise should have been used.

Berend Meijer: All the noise limits in the environmental statement were taken from planning advice note 56, which is based on an English document, which in turn is based the older WHO guidelines. The problem is that PAN 56 applies only in situations where a new building is being erected close to an existing noise source. Our situation is completely different: a new noise source is to be located adjacent to existing buildings. All the limits that are being taken from PAN 56 should be lowered; the question that is open for discussion is by how much.

One area of particular concern is the peak noise limit of 82dB. The way in which the 82dB limit is used in the environmental statement equates to about 70dB in a bedroom with proper ventilation that faces the railway. However, 70dB is about the noise level that an alarm clock makes in the morning. Nobody can convince me that that noise level is acceptable at night time.

Another area of concern is the two different sets of limits that are used in the environmental statement: average noise and peak noise. Most of the limits relate to average noise—that seems to be common practice. Although average noise is very useful to describe something like a motorway with its continuous stream of traffic, it is not very useful to describe a railway that has four train passages an hour. Although a lot of noise is generated in those four passages, if it is averaged out over an hour, very low values can result.

The only real limit that is worth looking at in relation to the Waverley railway line is the peak noise limit, as that is the noise that will hit people. Unfortunately, the peak noise limit of 82dB is completely unrealistic.

Margaret Smith: In your contribution, you alluded to the fact that the average noise limit is the limit that is usually used in these circumstances. Edinburgh airport is in my constituency and arguments like the one that you put forward are also put forward by my constituents. They say that, although the issue for them is the peak noise at the time that it is happening, the average noise limit tends to be taken as the standard. Have you taken up that point with the promoter? If so, what was the promoter's response?

13:30

Berend Meijer: Yes. Obviously, the promoter received a copy of our comments on its documents—I guess that that was done through the committee's procedures. I also wrote a detailed letter to the promoter, setting out why I disagreed with the noise limits as they are set out in the environmental statement. After a long time, that has led to a meeting with the noise consultant from ERM, to whom you will speak later this afternoon. At that meeting, we again expressed

what we thought about the validity of the noise limits. In all cases, the consultants basically say, "This is how we have always done it so why should we do it differently this time?" That is the same sort of philosophy that was expressed by the people on the first panel this morning.

Margaret Smith: How would you respond to the promoter's suggestion that the environmental statement uses the noise impact threshold criteria in PAN 56, which interprets the WHO guidelines in a planning context? Those guidelines do not aim to set limits on environmental noise.

Berend Meijer: It is true that the WHO guidelines give values rather than limits. However, it is normal to derive limits from guideline values—you need to base them on something. You can see that in the fact that even PAN 56 bases itself on an earlier WHO document.

Christine May: Mr Street, you have made a number of comments about the adequacy of the environmental statement in the context of, for example, new jobs and socio-economic effects, reducing traffic, visual impacts and noise levels. Can you elaborate on those insofar as they relate to the adequacy of the environmental statement, rather than merely to a difference of opinion between you and the promoter?

Ron Street: In relation to the visual impacts—and I am, obviously, referring to my locality rather than elsewhere—although the promoter has indicated that a bridge will be built across the A7, it has not defined the nature of the bridge or the visual impact that it will have. It has indicated that landscaping will take place and what it will consist of, but has not been specific. None of that gives an adequacy to the promoter's costings. The design concept that the promoter is using is based on design and build. By its nature—and in fairness to the contractors—that will mean that the work will be done at the lowest possible cost to the contractor. That means that the outcome will not be acceptable for Newtongrange, which is a conservation area. Any project that is undertaken must be in keeping with the area and we cannot see how the project will be to that standard—it has not been costed to that standard.

On jobs—again this is my personal view—but the number of jobs that the promoter predicts will be created for Borders people is low. That is the case even during the construction period, when the housing that will need to be built is outwith the abilities of local contractors to deal with.

Christine May: How does that mean that the environmental statement is inadequate?

Ron Street: Because the environmental statement sets targets that are not necessarily achievable.

Mr Brocklebank: I have a direct question for Dr Wyllie. In your objection, you said that there was no mention of your property or that of your neighbour in the environmental statement, despite the fact that those properties

"are as close as any others to the proposed route".

I understand that there is a typing error in table 15 of the promoter's supplementary memorandum to the Casella Stanger peer review and that "Westbank Grove" should read "Westfield Bank". I also understand that a noise barrier has been recommended to mitigate noise impact and that vibration will be considered at the detailed design stage. Is that response adequate?

Dr Wyllie: It is not adequate. Our properties were not included in the statement despite the fact that in June 2002 we met members of the Waverley railway partnership. The promoter was perfectly aware of our properties, but saw no reason specifically to include them in the environmental statement. I received notification of the typographical errors that are in two places in the supplementary memoranda that were supplied in August 2004—after the date by which objectors had to respond to the promoter's response to our original objections, which was 29 July 2004.

You asked about the mitigation measures. Only last week I received information about the estimated sound measurements in relation to our properties. The assessments are obviously based on models; the sound levels cannot be measured until the railway is built. However, the estimates are still above what would be considered acceptable levels of disturbance. The proposed mitigation measures go nowhere near satisfying our concerns. That relates to the issue about the plans, which the convener raised in detail. It is difficult to appreciate how mitigation measures can be put in place, given that we are talking about extremely small distances. Moreover, I am not sure whether the erection of a sound barrier at a particular height—about 2.4m, if I remember rightly—would mitigate the noise in bedrooms in two-storey houses, which are generally located on the upper floor, considerably higher than 2.4m.

Mr Brocklebank: Do you think that there is scope to solve some of the problems that you identified before the detailed design stage?

Dr Wyllie: Sorry, will you repeat the question?

Mr Brocklebank: You say that what you have heard so far would not go far enough to mitigate the problems, but the promoter says that they will be able to provide more adequate detail at the detailed design stage. Do you think that your problems can be addressed at the detailed design stage?

Dr Wyllie: No, I do not. Alison Gorlov talked about the sword of Damocles, which is still

hanging over us. The fact that the promoter might provide detailed evidence of its ability to mitigate noise does not address the problem that the mitigation measures that are currently proposed do not seem reasonable or adequate. The proposals do not address the issues that we raised. Perhaps another witness wants to comment on that.

The Convener: If no one wants to come in on that, we will move on to the next question.

Gordon Jackson: My question is for Mr Bull. You expressed concern about the environmental statement's apparent failure consistently to deal with your property and other properties, such as the former station house at Fountainhall, Falahill Cottages and other properties, which would be further from the track. The promoter responded to your concerns in a letter of 23 August. Do you have comments on the response?

Robin Bull: I think that the promoter's response was that it would not be practicable to detail every property, so a representative sample was used. I suggest that the promoter picked easier samples to furnish the environmental statement and supplementary memoranda and that that was a cop-out—pardon the phrase—and a non-answer.

Gordon Jackson: In what sense do you mean "easier samples"?

Robin Bull: The promoter picked receptors that are 50m to 60m away from the proposed line and commented at length on the impact that the railway would have on properties at those points. There is a single line in the report that pertains to the impact on my property, which is 6m from the line—the work would consume the garden, in fact. I consider that the disparate nature of the detail given to impacted receptors does not meet due process.

Gordon Jackson: You think that the process has been weighted or fiddled.

Robin Bull: It has been weighted to the receptors that are easier to deal with.

George Baillie: In our case, we pointed out to the promoter the fact that there were no receptors anywhere near the properties involved and that we could only extrapolate from receptors that were in a similar area and at a similar distance from the proposed track. Eventually, we received another sound investigation report, dated 27 February this year. That took into account three points near the properties to evaluate background noise. The first one was sited approximately 100m away from the proposed track, close to the A7. The second point was sited in the water treatment works and the third was sited in the building site itself. I fail to see how that can be representative of providing background noise.

We highlighted to the promoter that we did not feel that the sound investigation works were adequate and its response was to commission immediately that further report that was issued on 27 February.

Gordon Jackson: As I understand it, noise impact has been assessed and the promoter has reported on that. A noise barrier has been specified and, in particular, the promoter has referred to the draft code of construction practice that deals with noise and dust levels. Does none of that help to meet your concerns?

George Baillie: It concerns me that when properties are 4.5m to 5m away from the proposed railway line the promoter suggests using generic sound barriers that are up to 1.5m high. I fail to see how, where there is an elevated track that could be between ground and first floor levels, a 1.5m high sound barrier would be adequate to compensate for noise levels of 82dB to 83dB.

Gordon Jackson: What would be adequate in your view, apart from not having a railway?

George Baillie: I would shift the line a bit further over or I would consider using mounding. Those are the only means that would affect the visual and sound impact—one has to build a physical barrier that is high enough to deflect the sound. It would be similar to what is used on motorways where the sound is deflected up the way. We already have a 1.5m fence and I fail to see how an elevated railway track between ground and first floor levels some 4.5m to 5m away from the building will compensate for noise levels of 82dB to 83dB. That is what the promoter is offering to provide.

Gordon Jackson: None of you gentlemen wants the railway for personal reasons. I am not saying that I would be any different, so I am not making any criticism of that. You raise obvious concerns about noise, pollution and dust, but against a background of not wanting the railway, which is, as I said, understandable. Can you imagine that anything could be done about those environmental noise levels that would help the situation or could you never be content with the line? If that sounds pejorative, I do not mean it to be—I just want to know whether there could be any area of agreement.

George Baillie: It is not that we could never be content with the line. When one looks at the bigger picture, one of the principal factors of our objection to having a 48km long railway line between Gorebridge and Galashiels is that it would not serve the communities in between those places because they would have no access to it.

13:45

Dr Wyllie: Although we have all lodged similar objections and raised similar issues, we find ourselves in slightly different positions. For example, part of our land may be subject to compulsory purchase, or the railway may be immediately adjacent to our property. To the question of whether anything can be done to mitigate the noise level, the answer for our particular objection is nothing. There is no room to put in a barrier that would mitigate the noise level.

Mr Brocklebank: Your main criticisms of the environmental statement appear to focus on the failure to assess the impact of the railway on your property, on assumptions in noise assessments, and on a failure to take into account decibels, loudness effects and ambient noise levels. Most of those issues appear to have been addressed in the various answers to our questions, but would you like to add anything before we move on?

Dr Wyllie: I would like to raise an issue that we have not dealt with at all. It is not to do with noise, but with safety. A railway will be going through residential areas. In this locality, which I know reasonably well, a large number of new-build properties are naturally family homes and young children will live there. I understand that the Executive has issued, only today, guidance on safe play near railway sites. I find it extremely worrying that a railway can be put through a residential area where there are children at play. The distances in question would be less than that between my seat and yours.

The Convener: Thank you, gentlemen, for your evidence and for your courtesy before lunch in assisting the committee with its timings.

13:46

Meeting suspended.

13:48

On resuming—

The Convener: I welcome Iain Rennick, who is the area manager for the Forth and Borders of Scottish Natural Heritage; Steve Hunt, who is the area officer for the Borders of Scottish Natural Heritage; David Campbell, who is the Edinburgh team leader of the Scottish Environment Protection Agency; and Angela Foss of the Galashiels team of the Scottish Environment Protection Agency.

I understand that Iain Rennick wishes to make a short opening statement.

Mr Iain Rennick (Scottish Natural Heritage): Thank you convener, and good afternoon. I will keep my opening remarks very brief because we have provided the committee with a summary of our current position. I hope that that has been helpful.

Scottish Natural Heritage supports the objectives of the bill and wants the project to go ahead. However, as you would expect given our remit, we want to ensure that it goes ahead in a way that minimises the impact on the environment and complies, as it must, with environmental law. As things stand, we cannot be confident that that will be the case. We have been advising for the past year that additional technical and environmental information, at a more detailed scale than is provided in the bill and in the environmental statement, is required. That is particularly important for the sections of the railway that run alongside or over the River Tweed special area of conservation.

The committee is aware, not least from the evidence that we have previously submitted, of the requirement of the Conservation (Natural Habitats, &c) Regulations 1994. Those regulations set quite a severe test for the bill to pass before Parliament can agree to it: it must be shown that the railway will not have a significant impact on the special area of conservation. Ultimately, that is a decision for Parliament, guided by the committee. We suggest that you cannot leave that to trust. You require the information at a sufficient level of detail to allow you to judge that there will be no significant impact on the site.

We have been in regular dialogue with the promoter and, particularly in recent weeks, we have become more optimistic that the information that we have suggested is required will be forthcoming in due course. Obviously, until that information is provided and we have had a chance to analyse it, we have to reserve our position. That is all that I want to say by way of opening remarks.

The Convener: Thank you very much.

I have a couple of questions that are specifically for SEPA. SEPA's written evidence to the clerk on 26 July 2004 commented on the draft code of construction practice and flood risk aspects, nature conservation and air quality. Do you have concerns about the adequacy of the environmental statement on those points?

David Campbell (Scottish Environment Protection Agency): We have responded very positively to the environmental statement. You will see from our response that a lot of the responses that we made were comments rather than questions or statements that required actions to be taken. There has been quite a lot of dialogue with the promoter, particularly in relation to the construction code of practice. It is probably fair to say that we have been satisfied that the points that we have raised have been addressed adequately by the promoter.

The Convener: Is SEPA content that flood risk aspects should be addressed by the promoter at a later stage?

David Campbell: Yes. To some extent, SEPA has powers that it can invoke in relation to the Water Environment and Water Services (Scotland) Act 2003 or the Control of Pollution Act 1974. Certain permits are likely to be required as part of the operation. We have certain powers to ensure that that is the case and there would certainly be dialogue to ensure that there is compliance.

Mr Brocklebank: I will address one or two questions to the SNH representatives. The committee will deal shortly with appropriate assessment, but from what you have said your view appears to be that the environmental statement is inadequate generally and that it fails properly to assess the likely significant effects on the environment of the development that is authorised by the bill. Can you go into some specifics for us?

Mr Rennick: Certainly. I will ask Mr Hunt to go into the detail, as he helped to put together our response.

The gist of it is that, specifically in respect of the special area of conservation, we do not feel that the project has been defined in sufficient detail to allow us to say what the impacts of the development would be and therefore what mitigation measures, if any, might be possible and what those measures might cost. We are looking, in particular, at further environmental surveys of habitats and species at the point where the line crosses the River Tweed special area of conservation or runs closely alongside it. We are looking for details of not only environmental information, but technical information on what kind of engineering works will take place at those points. Only by getting that detail will we be able to establish whether there would be an alteration in the line of the river or the flow of the river, whether there would be a sediment discharge into the river and what the likely impact of that would be on the habitats and species at those points.

In addition, there will be a cumulative effect from the works along the river system and we would like that to be analysed. We do not think that enough information was available at the outset to allow the environmental statement adequately to assess the impact of the development.

Mr Steve Hunt (Scottish Natural Heritage): I agree. I stress that significant progress has been made during the past three weeks. The further environmental information that has been provided to the committee makes significant commitments and represents the achievement of an addition to the baseline information that we regarded as inadequate in the original ES.

If you wish, I will go through our comments—

Mr Brocklebank: It would be useful if you would write to the committee to state your specific concerns, so that we are clear about what you are saying. Perhaps you would indicate whether you think that it would have been reasonable for the information to have been provided to you by this stage. Is that possible?

Mr Rennick: We are happy to write to the committee. We have answered the question several times before: in our letter to the promoter in April last year, in our letter to the committee on the environmental statement in July last year, and in several subsequent meetings and discussions with the promoter. However, we are happy to repeat that information for the committee's benefit, if you like.

Mr Brocklebank: Are you saying that, despite requests by you for the promoter to provide the information, it has failed thus far to do so?

Mr Rennick: We first raised our concerns in April last year. From our perspective, progress during 2004 was frustratingly slow but in the past couple of months there has been a definite sea change; there has been a commitment on the part of the promoter to recognise that the concerns are genuine and need to be addressed, and that it is willing to come forward with the information that we recommend it should provide.

Mr Brocklebank: Has SNH been provided with details of generic mitigation, for example on bats and badgers? If so, has that information been considered and to what extent does it address your concerns?

Mr Rennick: The important point is that that information is generic. We seek more specific information on the impact on protected species or habitats at specific points.

Mr Hunt: I do not have much to add to that. A confidential survey of badgers was undertaken as part of the ecological impact assessment of the environmental statement and a number of locations were identified as potential bat routes. As part of the further environmental information check, comprehensive surveys are proposed by the promoter for both badgers and bats.

Christine May: Mr Rennick said that it is difficult to ascertain to what extent the waters of the Tweed might be impacted upon until detailed engineering surveys have been done. I ask the witnesses from SEPA, as well as those from SNH, whether there is a danger that those detailed surveys will not be done until considerably later in the proposal. That might result in a significant increase in costs at a stage when it would be too late for the information to be taken into account by the committee, or by SEPA and SNH, in

commenting on the adequacy of the environmental statement.

Mr Rennick: Yes. That is why we have been pressing for additional information to be provided, either for the environmental statement or for the appropriate assessment. We are concerned that the detail of the design that we think is required to assess the impact on protected habitats and species will come too late in the process to allow any meaningful mitigation to be put in place. The horse will have bolted after the stable door has been shut; it will be too late to make the improvements that might be necessary.

Christine May: Does SEPA concur with that view?

David Campbell: Things are probably slightly different for SEPA. I think that there is the normal level of detail that we would expect in submissions in environmental statements for planning. We realise that there may be debate about whether the whole project will go ahead when such information is provided and that there is the difficulty of the detail that can be provided economically at that stage. However, it would not be unusual for such a level of detail to be provided for general large-scale planning schemes.

14:00

Margaret Smith: I want to pick up on what SEPA has said. At a couple of points in your submission, you highlight your concerns about construction works that

"are likely to cause disruption to affected watercourses, principally the Gala water."

You highlight the fact that

"there is little detail regarding specific … crossings, making it difficult to comment on the likely level of impact associated at this stage."

However, you have almost said to us that that is what you would expect at this stage. The committee is looking to people such as you—who are much more expert in such matters than we are—to say whether there is anything that relates to such construction work that we should be concerned about.

David Campbell: I will make some general comments and then invite Angela Foss to give details about Gala water.

In mitigation circumstances, the general principles of drainage abatement measures such as sustainable urban drainage systems or treatment systems for suspended solids from construction sites that have been accepted will often be put in place, although absolute details about such things are inappropriate at this stage. Certainly, we do not, at this stage, have available some details about the construction of the bridge crossings and bridges, although further discussions at a later stage have been talked about. Our presumption has been that there would be a compromise between engineering aspects and conservation aspects of the project, which would probably be generally appropriate.

Margaret Smith: I will play devil's advocate. If such a compromise were not reached and SEPA and SNH were still unhappy about elements of the crossings on, for example, Gala water, are you saying—this is based on what you said earlier—that you think you have the powers to be able to do something about that? Would the power to be able to do something have been lost?

David Campbell: We presume that we will have the powers to be able to do something under the Water Environment and Water Services (Scotland) Act 2003, which is due to be implemented by the Parliament later this year. Whether those powers are available to us depends on the dates on which the scheme in question would go ahead and how they would relate to the implementation dates for the Water Environment and Water Services (Scotland) Act 2003. I think that the presumption is that the 2003 act will probably be implemented before then.

Margaret Smith: Would I be correct in saying that that also goes for your concerns about contaminated land, such as that at Millerhill marshalling yards and Monktonhall colliery?

David Campbell: The powers are already in place for dealing with that.

Margaret Smith: We have touched on appropriate assessment under the habitats directive, which comes into play because we must look into that matter at the consideration stage and take regard of your views. In particular, I want to deal with SNH's view that it has received insufficient environmental information from the promoter to be able to form an informed view on whether the project will adversely affect the integrity of the protected area. The River Tweed special area of conservation, for example, has been mentioned in passing.

Will you update the committee on SNH's recent discussions with the promoter on that matter, on what further information the promoter has agreed to provide and by when it has agreed to do so? I want to pick up on the point that Ted Brocklebank made. What do you need for appropriate assessment and when do you need it? Give us the bullets if you want us to fire them.

Mr Rennick: What do we need and when do we need it? Our role is advisory and, ultimately, it is for the committee to request the information in a timescale that suits it. I would, therefore, turn the point back on you and say that it is up to the committee to make it clear to the promoter—

Margaret Smith: I would fire back to you the suggestion that we would do that after taking regard of your guidance.

Mr Rennick: That is a fair point.

Things have been moving quickly in recent weeks. As recently as last Tuesday, we had a meeting with the promoter and the environmental consultants to talk through some of the issues. As I said, we feel that our letter to the promoter of April last year and our letter to the committee of July last year set out the information that is required. As of last Tuesday, we have had a commitment from the promoter and its environmental consultants to provide that information.

You asked when we will receive that information. We have not been given a timescale and, obviously, we want to follow up the issue of when the work might take place and when the results might be available for us to analyse.

Margaret Smith: The promoter's memoranda on appropriate assessments describe how the promoter thinks that that process should be managed. It suggests a two-stage process, with the Parliament assessing the outline proposals and the planning authority carrying out a further appropriate assessment in respect of the detailed proposals. The promoter indicates that that is what would happen in the planning context. Is that your experience and what is your response to that approach?

Mr Rennick: To an extent, that is our experience. We are not entirely comfortable with it in this context. We think that the Parliament, through this committee, has a duty to apply the requirements of the habitats regulations and that, therefore, you require the detail at this stage to allow you to pass regulation 48(5), in particular, which places the onus on you to not allow the project to proceed unless you are content that it will not adversely affect the integrity of the site.

Gordon Jackson: The promoter has suggested that a minute of agreement be entered into between it, the Scottish Environment Protection Agency and Scottish Natural Heritage to deliver agreed mitigation works. However, it seems that such an agreement could be entered into only once the likely significant effects had been properly identified and provided that they could, in fact, be mitigated so as not to adversely affect the site. The problem for me is that that does not get round the fact that an appropriate assessment will need to be properly carried out. Would you care to comment on that?

Mr Rennick: You have perhaps given the answer that we would have given. The concern that you outline is the concern that we have had about entering into such an agreement at this stage. We think that it would be premature to do so while the appropriate assessment has not been undertaken and while there is still a possibility of there being an adverse effect on the European conservation site. We have therefore refused to enter into such an agreement at this stage.

The other principle, of course, is that the agreement in the draft that we were presented with assumes that any adverse effects can be mitigated through agreement. Obviously, we are concerned about situations in which no mitigation can be taken to overcome an adverse effect. In those circumstances, there is scope for a fair degree of conflict between SNH and others on whatever grouping is managing the process.

In saying that, I am not ducking out of continuing involvement in the project or saying that we will stop advising on mitigation measures; I am merely saying that I do not think that a formal agreement would be appropriate at this stage and might not be necessary in the long run, if the appropriate assessment shows that there would be no adverse impact.

Gordon Jackson: In that case, is that simply something that you will keep on the back burner? Is the idea of an agreement closed, or is it still a possibility?

Mr Rennick: We would be prepared to go back to the idea at a point at which Parliament had undertaken an appropriate assessment and it had been shown that there would be no adverse effect on the European conservation site. SNH is well used to working alongside road developers and so on in an informal context; we always continue to consider further mitigation measures as more detailed plans are drawn up and some inevitable marginal changes occur. However, we have reservations about whether a formal, legal agreement would be an appropriate way in which to go forward. We would be prepared to consider that again once the appropriate assessment had been done.

Gordon Jackson: But not now. Does SEPA have any comments on that?

Angela Foss (Scottish Environment Protection Agency): We have not yet signed up to the agreement, but we are obviously not averse to the principle of involvement. As David Campbell has said, we have certain legal powers that we would still be able to utilise, even without the proposed agreement. At this stage, there are certain legal issues that we want to resolve, on which we are seeking advice. We are certainly not averse to signing up to the agreement and we would want to be involved in the process of ensuring that everything is implemented as we would wish.

Mr Rennick: There is a distinction between SEPA and SNH, in that SNH does not have

regulatory powers that would allow us to enforce conditions after the bill has been passed.

Gordon Jackson: My final question is a catch-all. Does either organisation have any other concerns that it would like to leave with us? Is there anything else that you want to tell us?

Mr Rennick: No. Broadly, you have asked the questions that we expected you to ask, so we are comfortable that we have covered them.

David Campbell: I concur with that.

Gordon Jackson: All right.

The Convener: I am sorry that our questions have been so predictable. I thank the witnesses for coming to answer our questions.

14:11

Meeting suspended.

14:13

On resuming—

The Convener: We continue with our evidence on the environmental statement. Lily Linge is head of heritage planning at Historic Scotland. My colleague Ted Brocklebank has a question for her.

Mr Brocklebank: I begin by asking about the one scheduled ancient monument on the Shawfair to Gorebridge section, which I think is referred to as SAM 6202. Have suitable mitigation measures been discussed and agreed by the promoter and Historic Scotland?

Lily Linge (Historic Scotland): Just last week, I had a telephone discussion with Environmental Resources Management Ltd, the promoter's environmental consultants. As part of that discussion, it was confirmed to me that the scheduled monument will no longer be affected. All the impacts on the monument have been moved, so it will now be saved as we wish it to be; it will be unaffected by the development.

Mr Brocklebank: That brings that line of questioning to a stop. Are there are any other scheduled ancient monuments that we should talk about?

Lily Linge: No. There is a residual issue, which I raised in my submission on the promoter's response. The bill identifies works on the land that contains the scheduled monument. We want to ensure that the scheduled monument's not being affected is reflected properly in the bill in respect of the land that it identifies for works, so that when whoever will eventually build the railway comes along, they are in no doubt that the scheduled monument's land is not available for carrying out works.

I had preliminary discussions in my telephone conversation last week with ERM about how we might deal with that. ERM has been waiting for advice from its lawyers on the issue and we have agreed to discuss it further. If the committee would like further reassurances, we can provide something in writing after we have had further discussions.

14:15

Mr Brocklebank: That might be useful. Could anything still be done on the plan to ensure that no other scheduled ancient monuments will be included or affected?

Lily Linge: We are happy that no other scheduled monuments will be affected.

The Convener: You gave evidence to say that you met the promoter just last week. You are the second witness in succession to refer to having had a meeting with the promoter just last week. Are you disappointed or annoyed that the promoter has not met you before now to sort out problems? What spurred the promoter to have a meeting just last week?

Lily Linge: We had a telephone discussion, not a meeting. We met the promoter in August 2004, when the issue of the scheduled monument first came to the fore. The scheduled monument was an issue because of a fundamental error in the promoter's gathering of environmental data—it failed to appreciate the extent of the scheduled monument. An exchange of letters towards the end of last year resolved some issues, but the problems were not entirely solved until the end of last week. I agree that it is slightly disappointing that that resolution took so long. However, the issues included removal of an access track and rerouting of a cycle track, so I accept that it might have taken some time to find alternative routes.

The Convener: It is well over a year since the bill was introduced. Are you disappointed that it has taken all that time to resolve your concerns only partially?

Lily Linge: I am perhaps more disappointed that the scheduled monument was not correctly identified in the first place. Good planning should start from the principle of avoidance. Our view is always that care should be taken at the outset to avoid scheduled monuments because of their national status. We were surprised to find that the scheduled monument had, simply through error, not been avoided.

The Convener: Was the failure to identify the ancient monument a land referencing issue? Who was responsible for that omission?

Lily Linge: I do not think that it was a land referencing issue. Something went astray between

our providing the information and the writing of the environmental statement. Somehow, our information does not seem to have been used.

Margaret Smith: Will you update us on discussions about the listed footbridge and road bridge at the former Eskbank and Dalkeith station?

Lily Linge: We understand that that has been saved. An agreement about remedial works to it has been made, but it will essentially be left in situ. The additional environmental information that was provided in February still says that the bridge is not saved, but I have been told that that is an error.

Margaret Smith: Will the cost of that be part of the project's general cost? There was talk of approaches being made for grants.

Lily Linge: I know nothing about that. I am not aware that any approach has been made to Historic Scotland, but the matter was raised at a meeting. As is the case for anyone else, it is open to the promoter to explore with Historic Scotland the possibility of a grant.

Margaret Smith: Are discussions under way to involve Historic Scotland in the prior approvals process for station platforms and buildings—particularly those that might affect a listed building's setting?

Lily Linge: I am not aware that there has been movement on that since our meeting in August, at which it was agreed that Historic Scotland wished to be part of the process and would be consulted. We have had no further discussions on such issues.

Margaret Smith: Did you expect to have had further discussions by now? Do you expect to be involved in continuing discussions?

Lily Linge: I am not sure whether we expect that—that depends on how much of the detail has been developed. We fully expect to be consulted in the usual way when sufficient detail is available. I accept that some of the issues that we raise concern matters of detail.

The Convener: I thank you for giving evidence.

14:20

Meeting suspended.

14:31

On resuming—

The Convener: We shall now deal with the promoter's memorandum on consultation. Our witnesses are Bruce Rutherford, the head of asset management with the Scottish Borders Council; Andrew Rosher, a principal consultant with Turner and Townsend; Douglas Muir, a specialist services manager with Midlothian Council's strategic services; and David Southern, a director with Harrison Cowley. Bruce Rutherford wishes to make a short opening statement.

Bruce Rutherford (Scottish Borders Council): I will keep this as short as I can. The three words that have guided the communications team since the launch of the official consultation exercise have been "open", "honest" and "accessible". The first stage was the launch of a communications campaign in January 2002, which was designed to let people know the nature of the outline proposals. We launched a widespread campaign for the general public, with particular focus on reaching the people who live and work in the region of the rail corridor. The launch offered an immediate communications forum; a dedicated telephone hotline and website were established to encourage debate among all interested parties.

The second stage of our public consultation campaign, which began in July 2002, comprised a series of public exhibitions that toured the Borders and Midlothian to bring the project as close to people as possible and to engage them directly in the decision-making process. The 30 roadshow events captured the views of many communities and allowed attendees to learn more about the project. The roadshows also allowed the Waverley railway partnership to identify individuals and groups who might be directly affected by our proposals. The consultation process, which is continuing, allows the partnership to maintain relationships with and provide regular updates to those who are directly affected by the proposals.

We believe that the consultation has been extensive, given the size and complexity of the project. We followed the best available guidance, namely the code of practice on dissemination of information during major infrastructure projects, the guidance on the Transport and Works Act 1992 and planning guidance. Personal and group meetings were offered with representatives of the project and approximately 628 meetings were held with interested parties. In addition, we engaged extensively with statutory and non-statutory bodies. The promoter believes that its strategy of openness, honesty and accessibility has been successful.

Margaret Smith: How do you answer objectors' allegations that, following requests for meetings, several months or—in some cases—several years elapsed before meetings took place? Once the meetings took place, people then had to wait for significant periods before action points were taken forward, if they were taken forward at all. How do you square that with the statement that you have just read out to us?

Bruce Rutherford: We have to admit that there were instances when people told us that they would like a quick meeting, and times when it was not possible to collate for them accurate information. In those instances, we endeavoured to get back to people as quickly as we could.

The committee has heard today from six people, but we have dealt with hundreds of people. We believe that we dealt successfully with their requests: we have provided information and have done so directly and in as detailed a manner as possible at this stage in the project.

Margaret Smith: In your pre-bill introduction consultation, did you seek the views of local community groups, residents associations and so on about the form and timing of the consultation? How did you actively encourage the public to submit information?

Bruce Rutherford: The committee has to look back beyond the bill consultation process. The project has been going on for years; it has not been manufactured only in the past couple of years. The local authorities started to work on the project as far back as the early structure plan and local plan stage. The project also formed part of our local transport strategies. All the different forums in local communities were involved in the consultation at that early stage.

We moved on with a more up-to-date campaign, which was launched in January 2002. I will hand over to my colleague David Southern, who can give the committee an idea of some of the contacts that were made and the detail that we offered to the different communities.

David Southern (Harrison Cowley): I can add to that by saying that 54 group meetings were held. They were principally community council meetings that were open to the public and to which we were invited by the community councils. The invitations came to us as a direct result of the launch on 14 January 2002 of the communication campaign, which Mr Rutherford mentioned. Meetings took place from that date onwards and a number of others took place after the launch of the public consultation exercise on 1 July 2002.

As Mr Rutherford mentioned, the overall aim of the communication campaign was so that people could visualise the project. Until January 2002, the general public had no idea about the details of the plan for reinstatement of the line. Our aim was to put some flesh on the bones, so to speak. Only in July 2002 were we were able to present the project in a visual format through detailed maps and plans and through our information leaflet, of which the committee has a copy. As I said, the campaign prompted a number of requests for community group meetings.

Margaret Smith: One of the other private bill infrastructure projects, the Edinburgh tramline 1 project, will be built in my constituency. In fact, two of the tram projects will affect my constituency. At the request of the promoter of the Edinburgh tramline 1 project—Transport Initiatives Edinburgh Ltd—I agreed to chair a community liaison group. A local councillor attends the meetings, which are being held on an on-going basis, as do representatives of all the streets that will be affected by the tramline. People can ask questions, to which they will now usually get an answer within a specified time. They also have access to experts who have compiled the various accompanying documents and they have a chance to make an input.

Although people may not agree with many of the answers they are given, they now have a sense that they are involved in the process at the level of detail at which they need to be involved. I am not saying that those people have a general interest in tramlines but that they are involved in the process because the project will affect their heritable properties. Is anything comparable to that process going on in any of the communities that will be affected by the railway?

David Southern: If I may, I will start to answer the question and will then hand over to my colleague Andrew Rosher. One of the earlier panels alluded to the fact that a series of public meetings should have been held on an on-going basis.

Our view—and our advice to the promoter—was that public meetings would not be the correct format in which to engage the various individuals and groups of individuals who would be directly affected by the scheme. We thought that it was very important to retain control of the messages that went out, which is why we wanted to address the various groups in pockets—if members will pardon the expression. For example, the residents of Falahill were, in certain cases, taken as a group, as were the residents of Harvieston Villas in Midlothian, because we felt that it would be far more productive for the consultation exercise to find out what the group as a whole and the individuals in the group wanted. We found quite often that a pocket of householders who live in the same street did not necessarily all have the same objectives for the line. Perhaps Mr Rosher can give more details of direct one-to-one consultations.

Margaret Smith: Before he does so, I would like clarification. I presume that you are talking about the difference between public meetings that are open to any member of the public and retaining control of the messages that go out by addressing specific groups. Chinese whispers being what they are, I completely understand that approach. However, what have you done about getting round the table with people on an on-going basis to hear

their concerns and to have a dialogue about solutions?

David Southern: Our approach was principally in two stages, the first of which was the launch of the hotline on 14 January 2002. As I said, we were trying to get people to visualise the project, and the hotline gave people an immediate mechanism through which to engage with the promoter. On the same day, we launched the project website, which was a two-way mechanism that allowed people to find information on the project and to e-mail requests for further information or potential meetings.

We then built towards the launch on 1 July of the public consultation exercise which, in answer to Margaret Smith's point, was the public's opportunity to come along as individuals or in groups to see draft plans in detail for the first time. As part of that, we provided information leaflets, maps and plans that were relevant to that particular area, and exhibition boards.

The Convener: Before we move on, I want to ask about the maps and plans. Previous witnesses have said that the maps that they received were on such a small scale as to be almost meaningless. If that was the best material that they could access, how does that square with your comment that the maps were very detailed?

David Southern: I feel that that situation must be specific only to the witnesses who gave evidence today. I attended a number of the roadshows, so I know that two sets of plans were provided. Moreover, the information leaflet contained five inserts that showed the proposed station locations, how the park-and-ride facilities would be laid out, how the interface would act with the road and so on.

In addition, the technical team from Scott Wilson Scotland provided us with more detailed maps and plans of the rail line. I believe strongly that the majority of people gained enough information from those maps and plans to allow them to develop a view on the rail line and, specifically, on how it would affect their individual circumstances.

The Convener: I think that the witnesses in question, who were very articulate, said that the size of the map in the environmental statement made it almost impossible for them to work out who would be most affected and what measures could be put in place. If that was the best material they could access, how confident are you that everyone else was able to access the kind of very detailed information that you suggest was available?

Bruce Rutherford: We started from the position that the documents that were required to be submitted to Parliament were the land referencing plans, all of which were available in libraries. Such documents generally show the land that has to be acquired or the limit of deviation of the land beyond that. The plans gave people an initial indication of whether they were going to be affected. We followed that up with letters to inform the people in all the different categories that plans were available, and that meetings were arranged so that they could speak to us if they wanted to.

On the back of that, if people could not find enough information from the drawings that were available at the road shows, we supplied cross-sections or detailed drawings as they requested them. We heard for the first time this morning from a group of people who said that the drawings were not big enough to give the required detail. Up to now, we have been complimented on showing a linear route in drawings so that people can get a feel for what the railway will look like along the entirety of its length as it goes through towns. Perhaps Mr Muir will pick up from there.

14:45

Douglas Muir (Midlothian Council): Dr Wyllie approached me and asked how far his house would be from the line. I explained that because we did not have the final design, we could not fix exactly the position of the railway line. However, I was able to give him an almost precise distance from his house to the railway line, which I think was about 5.6m although I would have to go back and check that. As Bruce Rutherford said, the drawings are the parliamentary plans and they are to quite a large scale. I have 33 different plans to cover Midlothian, which makes a large book of plans.

The Convener: How are the letters to landowners that are referred to in paragraph 44 delivered? What evidence does the promoter have that all landowners who would be affected received a copy of the letter?

Bruce Rutherford: There were various types of letter, but I will pass the question to our land manager, Andrew Rosher.

Andrew Rosher (Turner and Townsend): I will just run through some dates and the numbers of letters that were sent out to landowners. The first letter was sent to the 56 parties that we believed would be most affected by the proposals. The letter alerted them to the proposals and gave the background to the project. That letter was sent out before the road shows. The second set of letters went to the same parties and alerted them to the possibility of compulsory purchase, which could affect their properties. That was also sent to 56 people. One set of letters was sent by first class Royal Mail post, and the second set was sent by recorded delivery.

The third set of letters went to 140 additional parties who we believed would be affected by

environmental measures such as noise and vibration. Those letters were sent by recorded delivery.

In February 2003, we also hand delivered 350 letters to parties who live adjacent to the limits of the land that was to be acquired or used. Following that, we sent out 118 letters to objectors on 24 November 2003. The final mass mailing was made up of letters to the 22 objectors who did not say that they required a meeting following submission of their objections. You can see that we have sent out approximately 750 letters, some of which were hand delivered, some of which were sent recorded delivery and some of which were sent first class.

Margaret Smith: I come back to the consultation that you took part in before the introduction of the bill. What influence did people have on the route and choices for stations? Can you give examples of your changing the plans as a result of consultation?

Bruce Rutherford: We investigated about 40 different areas through discussions with individuals or groups of people and we have changed our ideas as we have proceeded with the bill. You will find those areas detailed in the memorandum that we have just handed to the committee. There is also a long list of individuals, groups of people and companies; there is quite a cross section of different interested parties. Mr Rosher will give some details.

Andrew Rosher: The lists are of the changes made to the scheme at the request of non-objectors and objectors. Non-objectors are those whom we consulted prior to objections being submitted. In their case we were not seeking to remove an objection but were extremely concerned that we needed to make changes to the scheme. One of the consultees was Asda in Galashiels. The changes ranged from a major realignment of the proposed rail route right down to reducing the potential temporary land take in Galashiels to ensure that someone could continue to access their property.

In response to objectors, we made minor and major changes to the scheme, which ranged from the removal of access requirements at Dalhousie farm cottages to a reduction in the land take adjacent to the listed building in which today's meeting is being held right through to a major realignment of a road in Galashiels. Where possible, we have taken account of people's opinions and requirements and changed the design of the scheme.

Gordon Jackson: Let us conjure the hypothetical possibility that the project should go ahead. How do you intend to consult the public and, more specifically, the affected persons? For example, will there be dialogue with people who are looking for compensation or dialogue to do with measures to deal with environmental mitigation? In other words, what future discussions are planned if the project proceeds?

Bruce Rutherford: The job is just beginning, so consultation is on-going. The scheme is in its infancy. It is our intention to keep affected parties that are close to the line fully involved in how we take the project forward.

About £8.6 million of compensation is provided for in the funding statement that is attached to the bill. That will take care of the necessary payments to people. We have also been in discussions with objectors and others who might be directly affected by the scheme and to whom compensation will be due in one form or another.

I will pass you across to Mr Rosher, who has been involved with the issue on a daily basis.

Andrew Rosher: In taking the project forward, we are following the key guidance that Mr Rutherford mentioned earlier, which is the code of practice on the dissemination of information during major infrastructure projects and the guidance issued under the Transport and Works Act 1992. The guidance makes it clear that consultation must continue up to and during the operational phase.

Our strategy for consultation is to continue to be open and constructive. We need to continue to obtain feedback to make the changes that are necessary to address issues. On specifics such as compensation and compulsory purchase, we will need to employ professionals to carry out that work in conjunction with the requirements of legislation and of individuals. I cannot go into specific details here, but we know that we have a lot of work to do. We have the guidance and the framework in place to continue that work.

Gordon Jackson: Will you also consult the public generally? Obviously, you will need to consult those who are entitled to compensation—you cannot avoid that because, basically, they will come looking for their money. However, do you have plans to keep being proactive in consulting the public?

David Southern: Yes. A crucial part of the on-going consultation exercises will be that we engage with the general public, as we have done from day one. It is important that we engage on an on-going basis with the public who took part in the original consultation phase. We should do that as a courtesy to all those with whom we have had communication. As Mr Rutherford mentioned, there have been over 40 changes to the original plan to date. Even if people are not directly affected by those small changes, it is common courtesy to maintain communication to ensure that people are absolutely up to date on the project.

I mentioned control earlier, but it is important that people who want to make a judgment on the scheme are presented with, and made aware of, the facts and figures in the correct format. We would most likely do that through community meetings and by maintaining the hotline, the website and the series of newsletters that we have issued since summer last year to keep people up to date.

Christine May: The objectors from whom we have heard were chosen relatively randomly—we could have heard from any number of people—but what they all had in common was criticism of the extent of dialogue. If, as Mr Rutherford suggested, they are a relatively small proportion of the people who are generally affected, what steps are you taking to deal with those individuals?

One witness told us that they would really like the railway to go away altogether, but what he might have said and did not—which I thought was telling—was, "To be fair, although the promoter wants the railway, it has done everything possible to satisfy my concerns." I would have liked to hear that because it would have told me that the promoter is at least trying. What have you done in respect of those disgruntled individuals?

Bruce Rutherford: What the sceptics said is a bit of a worry for us and we discussed that at lunch time. We feel that we have undertaken a good, proactive campaign of consultation, but we are hearing one or two comments such as those we have heard this afternoon.

We dealt as quickly as we could with informed information for individuals. Working in a local authority is all about working with people. It worries us that people out there still feel that they do not have the information they need or that they have not received immediately information that they have demanded from us. Perhaps Andy Rosher can tell you what he has done with individual groups.

Christine May: That is not what my question was about. My question was about what you will do about folk—not groups or those who are generally consulted—who say continually that dialogue is not good enough.

Bruce Rutherford: We must reply a bit more quickly to people. We have often told people that we cannot answer them quickly because an informed position needs to be taken. Whether we have not explained ourselves well enough to one or two individuals may take part of the blame. We felt that we had been fair with people and we have said that to them on occasion. That is not always what they want to hear, but we thought that we had picked that up well enough to have more of a receptive ear from them.

We will have to look back at how we have dealt with people and perhaps sharpen our response to them. One witness mentioned that they had not received minutes of meetings. We have minutes and notes of meetings, but we have heard that we obviously have a conflict with one gentleman—Mr Bull from Heriot—who said that he is waiting for us to produce redesigned alignments at his house. We understood that he would come back to us with details. We have done some work in the background on that, but he was obviously waiting for us to come back to him a bit more proactively. We feel that we have let him down on one instance.

Andrew Rosher: I will not go into too many details about individuals. The process that we tend to follow if we have had a meeting and received a request for information is to ask the relevant adviser in the project team to respond.

Mr Meijer mentioned meetings with ERM, which resulted from continuous correspondence. Fair play to him—he badgered us for information and we responded as quickly as we could. We explained to him that we could not respond overnight to some of his questions, because they were quite complex. Our duty is to protect the project, so we had to give him the right response. Whenever we can, we respond quickly. At other times, we cannot respond quite as quickly. That was just one instance.

Mr Rutherford explained that whether information is required is sometimes unclear when we leave a meeting. That was the case with Mr Bull. If he wants more information, that is fine. We can provide that and we will respond quickly to the request.

Christine May: Before we leave this issue and I return you to Gordon Jackson, can I confirm that that increased dialogue will also take place with SNH and SEPA, representatives of which referred to their regret at delays in response?

15:00

Bruce Rutherford: We have tried to be as open as we can be with SNH. In the early days, we took almost polarised positions on how best to take the issue to Parliament. We had extensive discussions with the clerks to the committee. However, we are now working closely with SNH. I felt uplifted today when I heard that SNH now appreciates the extra work that we have put in to get to a position that everyone is comfortable with. I am heartened by that.

Christine May: Good. I hope that the same will apply to the community, because I got the impression—perhaps wrongly—that Mr Rosher was proposing a formal, formulaic response to requests for public consultation. I would have preferred to feel that you were anxious to enter into almost a friendly dialogue with people, that

you would respect their views, and that you would not just wait for an appropriate individual to come back with their views, but instead would be a good deal less formal than that.

Bruce Rutherford: I reassure you that we will pick up on that. I appreciate from the earlier panel that there are one or two issues that we need to work on and resolve as quickly as we can. We have worked with hundreds of people and we have come to a good arrangement with them and they have come to understand better what we are trying to achieve. There is a balance to be struck.

Mr Brocklebank: Notwithstanding what you said in reply to Christine May, in light of what various witnesses have said today, taken in conjunction with the Minister for Transport's announcement last week, do you accept as fair comment the view that there is a fairly wide perception that the councils are determined to go ahead with the project regardless of the views of objectors?

Bruce Rutherford: Absolutely not. Given the length of the route, the number of objectors is disproportionate to the number of people who have openly supported the scheme. The Campaign for Borders Rail is a strong advocate of the scheme and it delivered a petition with 17,000 signatures to Parliament in 2002. We have approximately 130 objectors, out of which— [*Interruption.*]

The Convener: I ask audience members not to respond. This is not a public meeting. Please show the witnesses courtesy.

Bruce Rutherford: We know that quite a lot of the 130 objectors have taken a position to gain leverage in negotiations with us, which is not unusual. Also, a lot of statutory objectors are negotiating with us. We hope that their objections will be withdrawn shortly. The strong message from Lothian and Borders people is one of support. There is also support from many businesses in the two areas.

Mr Brocklebank: Nonetheless, the perception persists. Do you have any plans to alter that perception, particularly given the recent press statement by the leader of Scottish Borders Council, who said that the railway is now a reality and that the bill will go through by November?

Bruce Rutherford: There was natural enthusiasm in some of the pronouncements that followed the Minister for Transport's announcement last Monday. Given the process that we have to go through, we do not accept that the railway is a reality. There is a lot of hard work to be done and we have a lot of convincing to do to convince people that we have a good case. We strongly and firmly believe that the case is very good in transport terms, economic terms and social inclusion terms. It is up to us to convince you as a committee to take the appropriate action that will allow us to move forward to the next stage.

The Convener: I thank the witnesses for attending.

Our next panel of witnesses comprises Alison Gorlov, Ashley Parry Jones and Andrew McCracken, who is an associate of Scott Wilson Railways. I understand that Alison Gorlov wishes to make a short opening statement.

Alison Gorlov: I had not actually planned to do so, convener.

The Convener: That is fine—we will just move to questions. I am not sure whether it is a fan I hear or aeroplanes going overhead, but please speak a little closer to your microphone.

Christine May: Good afternoon, Mrs Gorlov. In your memorandum of September 2004, you provide information on how a book of reference would be compiled. We covered some of those issues this morning, but will you confirm that what has been detailed in that memorandum is how you compiled the book of reference for this bill?

Alison Gorlov: As I did not work on the compilation, Mr Parry Jones probably ought to tell you.

Ashley Parry Jones: Sorry, was the question on how exactly the book of reference was compiled?

Christine May: Yes. Is the information in your memorandum of September 2004 what was done?

Ashley Parry Jones: Yes.

Christine May: Some objectors have expressed concern about the adequacy of the plans enclosed with the notification letters. As I think you heard, that caused great difficulty in identifying the parcels of land involved. We accept that the promoter appears to have deposited the maps, plans and sections in compliance with the Presiding Officer's determination, but what consideration was given—when you were issuing extracts of those maps—to making them more user friendly and fit for purpose?

Alison Gorlov: May I ask for some clarification? I may have misunderstood what Dr Wyllie said, but I thought that he might have been referring to consultation letters and plans, rather than to formal notices and plans. I may be wrong and if so it matters not because I have answers to both points. However, I ought to point out that if any of the disquiet relates to letters regarding consultations, those of course are not the plans that were sent out by the referencers as part of the formal notice-serving exercise. Now Mr Parry Jones can answer the main question.

Ashley Parry Jones: Are you suggesting that there is a query about the maps, plans and sections?

Christine May: The concerns were over the adequacy of the maps that were sent out. If I were to put myself in the guise of a member of the public, I would say that there was no differentiation between letters regarding consultation with a map attached, and maps of reference.

I am in a slight difficulty. I am quite prepared to accept that the big maps in the libraries are perfectly adequate, but they are not the maps that the people who are most affected by this proposal will have seen.

If you cannot comment on the letters regarding consultation, that is fine and we will park that question for a moment.

Ashley Parry Jones: I cannot comment on the maps that accompanied the consultation.

In order to provide the maps that accompany notices, extracts are taken from the maps, plans and sections that form the very large volume. The mapping used in those documents is the most up-to-date Ordinance Survey mapping available, and the scales used are the scales set out in the guidance that we were given. Indeed, we bettered that guidance on occasion.

With one particular location, we felt that because of the very small nature of the properties, which is a result of the way in which they have been parcelled up, it would be useful to have a blown-up section for that area. A previous witness said that an awful lot of maps are involved. That is because the route is very long. The scale meets the industry standard; in fact, it goes well beyond that standard. I think that I am right in saying that the requirement is to use a scale of not less than 1:2500, whereas we have used 1:1250, which is twice as good. With one small section, we chose to use a scale of 1:500 but, frankly, that was not necessary elsewhere.

Christine May: It is your view that the maps that were sent out with the letters of notification were adequate and that, in some circumstances, you took steps to make them more than adequate?

Ashley Parry Jones: Absolutely.

The Convener: How many corrections has the promoter had to make to the book of reference since the bill was introduced?

Ashley Parry Jones: Off the top of my head, I cannot give you a figure. Earlier, we spoke about the problems of describing the changes as corrections or errors. The book of reference is a document that is meant to identify land that is being acquired—or affected—by the project and interests in it. There is a certain amount of latitude, because we have to achieve a document that is clear and easy for people to use. There is no absolute requirement to parcel things down to the n^{th} degree. The golden rule is that we should produce whatever provides a clear picture for users—in other words, the members of the public who read the information. If we achieve clarity, we are probably getting it right.

The Convener: When the bill was introduced, there was a book of reference. I am trying to establish the extent of the changes that have been made to that book of reference since the bill was introduced. If you cannot answer that question at the moment, I would be quite happy to accept an answer in writing, but I would like to get at least a ball-park figure.

Ashley Parry Jones: Many of the changes that we spoke about earlier this morning would not affect the book of reference. The book of reference contains details only of properties that are within the limits of deviation or the limits of land that is to be acquired or used. Many of the issues that we have discussed relate to properties that are outside those limits. There is no document for recording matters that relate to those properties. There will of course be a few errors in the body of the book of reference, but if I said how many there were, I would be plucking a figure out of the air. There might be 10 or a dozen such errors.

The Convener: Perhaps you could confirm that in writing.

Ashley Parry Jones: Absolutely.

The Convener: What reassurance can the promoter give that the documents are adequate and that the discrepancies that objectors have identified do not represent a significant failure on its part to depict accurately the fullest extent of the impact of the project on people who have any interests in the land?

Alison Gorlov: Perhaps I could answer that. The book of reference reflects the referencer's understanding of the ownership of the land and the interests in it on the date on which it was prepared. The book of reference is prepared from the same database as the notices. That means that if errors are identified that relate to land that is within the limits of deviation or the limits of land that is to be acquired or used, they will be picked up as errors in the database—the land referencer's records—and will occur as errors in the book of reference. At the end of the current review exercise, we will be able to say what errors there were. There are three errors that I know about that we have identified as a result of that exercise.

Other changes will have been made. They relate to changes in the site between the time when we

closed off the reference and the time when people told us that there had been changes, which was probably during the objection period. For example, there may have been sites that were under development at the time at which the book of reference was prepared. The details might have altered and that will be reflected now. That is probably what Mr Parry Jones had in mind when he talked about whether a change reflects an error.

The answer to the question is that the book of reference and the notices march hand in hand. The committee has already heard what we have to say about the overall accuracy of the referencing process that produced the book of reference.

The Convener: Thank you for your evidence.

15:15

Meeting suspended.

15:17

On resuming—

The Convener: Our final topic of the day is the environmental statement. We have witnesses from Environmental Resources Management Ltd—Stephen Purnell, senior associate partner; Stephen Mitchell, principal consultant; Sam Oxley, senior consultant; and Andrew Coates, principal consultant. We also have Roger Doubal, technical director with Scott Wilson Scotland, and Alison Gorlov. I understand that Stephen Purnell wishes to make a short opening statement.

Stephen Purnell (Environmental Resources Management Ltd): Thank you for allowing me to summarise the progress that has been made on environmental issues.

Throughout the development of the Waverley railway project, the promoter has paid careful attention and shown great commitment to minimising the scheme's environmental impacts. A thorough independent environmental impact assessment has been undertaken, in full accordance with the Environmental Impact Assessment (Scotland) Regulations 1999, as amended in 2002. Before the EIA was commenced, a scoping report was issued to statutory consultees, including Historic Scotland, SEPA and SNH. Those bodies made helpful comments that were incorporated into the environmental statement. In line with the regulations, a common definition of significance was used throughout and the assessment was made on a worst-case basis to allow it to cover variations that could feasibly be accommodated within the scheme's parameters. The assessment also considered the impact of alternatives that had been rejected.

Appropriate mitigation measures were identified and then approved and costed by the promoter, which has a clear commitment to ensuring that they are achieved. The ES also contains a code of construction practice that will form part of a binding agreement with the eventual contractor for the scheme. Since the completion of the ES, the promoter has, during the past year, maintained a fruitful dialogue with the statutory consultees, including SNH, SEPA and Historic Scotland. The issues that have been dealt with include the setting up of an environmental management group, progressing the concept landscape design and work on the appropriate assessment for the project.

As the committee is aware, an appropriate assessment is required for schemes that could adversely affect a Natura 2000 site, under the 1994 habitat regulations. Such an assessment is conventionally undertaken following the completion of an ES by the competent authority, which in this case, as we are all aware, is the Scottish Parliament. It is important that the survey work for the appropriate assessment is as up to date as is practicable. As we have heard, SNH and the promoter have been working together to identify the scope of the work that is necessary for the assessment of the works that are described in the bill. As Iain Rennick of SNH helpfully pointed out, considerable progress has been made on that. The work will be completed in sufficient time to provide the Parliament with the necessary information to enable it to undertake an appropriate assessment.

A number of issues were raised in the evidence from the earlier panels. Will I mention what they were?

The Convener: Yes, please.

Stephen Purnell: Principally, the issues, which were raised by local residents and SNH, related to the adequacy of the environmental statement. Those issues were the perception that the environmental statement might somehow be biased or weighted towards dealing with easy issues; timescales for the appropriate assessment work; a perceived error over the location of the scheduled ancient monument at Elginhaugh; and our apparent reluctance to meet consultees until recently.

Christine May: I will add a further issue. I asked about the potential cost implications of detailed engineering works and examinations and the steps that have been taken to ensure that, as far as possible, the works are minimised.

Stephen Purnell: Yes.

Mr Brocklebank: Will you respond to the concerns that SNH expressed that the environmental statement fails properly to assess

the likely significant effect of the project that the bill will authorise and that it is inadequate for the purposes of an appropriate assessment?

Stephen Purnell: I will start, but my colleagues may wish to add something.

SNH commented on the environmental statement last year, principally in July, but also in April. ERM and the promoter gave detailed answers to SNH's comments about the environmental statement in a supplementary memorandum to the Parliament in August last year. ERM is content that we have answered SNH's concerns in full. However, from what Iain Rennick and Steve Hunt said, SNH may still have outstanding concerns about the adequacy of the environmental statement as a document under the EIA regulations. I believe that written comments that set out the concerns will be forwarded to the committee, so until we have seen them, I cannot discuss those comments.

Mr Brocklebank: Yes, the witnesses said that they would put comments in writing, which we are looking forward to reading. When will any further information that you have be provided in the form of an addendum to the environmental statement, for peer review?

Stephen Purnell: An addendum to the environmental statement under the cover of further environmental information was submitted to the Parliament about two or three weeks ago. The document, which was issued simultaneously to SNH and other statutory consultees, deals with several issues, including the progress of the concept landscape design and the incorporation of consultees' comments on the code of construction practice.

That addendum also makes further progress with the appropriate assessment, which you asked about. We have been discussing the issue of appropriate assessment with SNH for several months, as Iain Rennick pointed out. I think that it was Bruce Rutherford for the promoter who mentioned that a fundamental hurdle some months back, which we now feel that we have overcome, was knowing exactly what SNH required from us to assist it in advising the Scottish Parliament on the appropriate assessment. SNH had previously asked us for a great deal more detail on the contents of the bill and the engineering design of the various structures. As a number of panel participants said, a bill submitted to Parliament does not contain a great deal of detail on the engineering design and structures. I think that a difficulty that we shared with SNH—if I can speak for it—was ascertaining precisely the amount of detail that would enable a full and appropriate assessment to be undertaken.

ERM and Scott Wilson for the promoter will now develop a greater level of detail than is currently contained in the description of the works that are proposed in the bill. That will go some way towards the detailed engineering design work that would normally come much later in the process. We are trying to bring some of that work forward to enable as much information as possible to be available before the Parliament to allow for the appropriate assessment to be undertaken.

We have discussed with SNH the timescales to develop that assessment and it has seen the broad principles laid out in two documents that we delivered to it recently. We will issue another document later this week that will talk about how we will develop further design detail. Surveys that SNH and ERM have discussed over the past few months will now be undertaken and will be completed towards the end of the summer. The agreement that we have reached is that all the work that we both believe is necessary for the appropriate assessment will be completed and signed off by both parties by the end of October.

Margaret Smith: I want to pick up on a point that was mentioned by SEPA about flood risk assessment. Will you look at that—and at changed drainage—and say how that fits into the environmental impact assessment process? Does it fit in with what you have just described?

Stephen Purnell: We have discussed flood risk. Perhaps Mr Doubal will respond to that.

Roger Doubal (Scott Wilson Scotland): A flood risk assessment has been carried out for the whole route, particularly along the Gala water. It might be worth setting the scene. In 1969, the line was an operational railway and the Victorians who designed it seem to have done a pretty good job—they designed bridges with abutments that are some distance away from the water. Our first task was to look at the flood risk. That was done and, by and large, it was found that even if we considered the greater degree of flood risk that global warming might bring—one might look at the risk of a 200-year flood—generally there was not a risk of flooding. There were a couple of areas where water got close to the rails, and the study had to consider those areas, but the results of our work show that there was not much of a flood risk.

Margaret Smith: Did you have discussions with SEPA on that assessment?

Roger Doubal: Yes, we did—not as much about the fruits of the work, but certainly about the methodology. We met SEPA, we were given guidance on what to do and how to approach the situation and we have followed those guidelines.

Margaret Smith: What progress is being made in agreeing undertakings with SNH and SEPA on mitigation and habitat creation? Will those commit the promoter to carry out, maintain and monitor the mitigation measures?

15:30

Stephen Purnell: We have been discussing mitigation measures with SNH and SEPA for some time. The measures are of course outlined in the environmental statement and we have been talking about mitigation that would need to be developed hand in hand with the appropriate assessment work. An early request from SNH was that we prepare mitigation notes for different species—my colleague Andy Coates prepared the notes and I think that SNH has had them for some months.

The committee heard about the mitigation agreements that we want eventually to draw up with SNH and others. We fully accept that SNH would need to be entirely satisfied with the effectiveness of the mitigation that is proposed in connection with the appropriate assessment work. We have discussed the matter with SNH and will undertake the work in due course. In general, the promoter maintains an absolute commitment to ensuring that all significant effects that might arise from the project are mitigated and to seeking a mechanism whereby measures can be agreed with objectors in a legally binding commitment. Alison Gorlov might want to add to that.

Alison Gorlov: There are all sorts of ways of ensuring that the agreement that we feel confident will be reached is made legally enforceable in the courts. Our approach appears not to have appealed much to SNH or SEPA, but that does not matter, because we can sort out other ways of proceeding.

I should perhaps comment on whether it was premature for us to produce draft agreements. I do not think that it was premature to produce a draft of anything. It would obviously be premature were SNH, SEPA or anyone else to sign up to a document before they were absolutely satisfied that they should do so. However, at some point, one must start talking about the document that will be signed. The drafts that were sent to SNH and SEPA on 13 December had the effect of keeping correspondence going and generating a certain amount of activity, which I am glad to say is having positive results.

Margaret Smith: In general, the promoter is committed to finding ways of binding itself to the commitments that it gives, not only to statutory and non-statutory bodies but to individuals and groups of residents who have concerns. As the process moves forward, the promoter is giving commitments to take certain action, the detail of which will be made clear only when the committee has done its job. Can you reassure us that your commitments will be taken forward?

Stephen Purnell: Yes.

Margaret Smith: I will go back a little and ask about the engineering works in the river. SEPA was concerned about the use of what it called "harder engineering" for matters such as bank protection and bridge construction and thought that the promoter might have proposed

"softer engineering techniques and options for 'greening up' schemes".

Will you take forward those ideas?

Andrew Coates (Environmental Resources Management Ltd): We certainly will. We are optimistic that we will take forward schemes that use as much soft engineering as possible and limit the hard engineering that will be required.

Gordon Jackson: We asked Historic Scotland about the ancient monument—it is not a monument in the normal sense of the word, but it is technically a monument—and we were told that a phone call had sorted out the matter. For clarification, will it be necessary to amend the bill to deal with the matter?

Stephen Purnell: I will ask Alison Gorlov to comment on whether the bill will have to be amended. I will make two points about the scheduled ancient monument to which Ms Linge referred, which is the Elginhaugh Roman camp.

First, although it might have seemed that I spoke to Historic Scotland last week just as an afterthought, we responded to Historic Scotland on that point in writing in December last year. Last week's conversation was simply to clarify a few points to ensure that I could be 100 per cent certain about what I would be speaking about today.

Secondly, our supplementary memorandum in response to the environmental regulators' comments, which we submitted to Parliament possibly as long ago as last August, gave fairly detailed reasons for ERM's firmly held view that information that was provided by Historic Scotland unfortunately placed the scheduled ancient monument in the wrong position, with the result that the scheme would not, in our assessment, miss the monument. We absolutely agree with Ms Linge that, in principle, the scheme should avoid scheduled ancient monuments. We would not have sought to plough a scheme through such a monument.

Gordon Jackson: And what is the outcome?

Stephen Purnell: The outcome, I believe, is that the scheme engineers have assured us that the two land parcels in which works were to be required that might have affected the scheduled ancient monument will no longer be required. We will be able to effect the scheme without having to use those two parcels.

Alison Gorlov can explain how that will be done in legal terms.

Alison Gorlov: We will not need to amend the bill for the Elginhaugh Roman camp. However, changes will need to be made to the affected listed structures—although Mr Jackson's question did not refer to those—that are set out in the table in schedule 9 to the bill.

The Convener: That concludes our evidence hearing for today. I thank the witnesses, both those who have just given evidence and those who gave evidence throughout the day. As we have no more meetings scheduled for Newtongrange, I take the opportunity to thank the staff of the Scottish Mining Museum. In particular, I thank Maureen Hardiker for her assistance in making arrangements to allow us to meet here today and two weeks ago.

Meeting closed at 15:37.

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