LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

AGENDA

21st Meeting, 2006 (Session 2)

Tuesday 12 September 2006

The Committee will meet at 2 pm in Committee Room 3.

1. Transport and Works (Scotland) Bill: The Committee will take evidence on the general principles of the Bill at Stage 1 from—

   Bruce Rutherford, Scottish Borders Council; and Douglas Muir, Midlothian Council

   and then from—

   Kevin Murray, Senior Project Manager, Edinburgh Airport Link, tie Limited; and Susan Clark, Delivery Director, Edinburgh Tram, tie Limited

   and then from—

   Alex Macaulay, Partnership Director of SESTRAN.

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Agenda Item 1

Submission from tie Limited

Submission from SESTRAN
TRANSPORT AND WORKS (SCOTLAND) BILL (“the Bill”)

WRITTEN SUBMISSION OF tie LIMITED

Introduction

1. **tie** Limited (“tie”) welcomes this opportunity to submit evidence to the Scottish Parliament’s Transport and Works (Scotland) Bill Committee.

2. **tie** is a limited company established by City of Edinburgh Council (“CEC”) in May 2002 for the purpose of delivering transport projects. Although **tie** is wholly owned by CEC, it also undertakes commissions for other clients. Acting for CEC, **tie** was responsible for CEC’s promotion of the Bills for the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006. The Scottish Executive has charged **tie** with the promotion of the Edinburgh Airport Rail Link Bill, which is currently being considered at its Preliminary Stage. **tie** is also acting as project manager on the delivery of the Stirling-Alloa-Kincardine Railway project authorised under the Stirling-Alloa-Kincardine Railway and Linked Improvements Act 2004 (the Bill promotion relating to that project having been undertaken by Clackmannanshire Council). **tie** therefore has recent direct experience of the promotion of Private Bills in the Scottish Parliament to authorise railways and tramways and the delivery of transport projects.

Private Bill procedure – a success?

3. The promotion of Private Bills is a lengthy and complex process for all concerned. Throughout its dealings with the Private Bills Unit **tie** has been very conscious of the demands that are placed upon the Parliament’s staff and, indeed, on MSPs sitting on Private Bill Committees. At the pre-introduction stage, a Promoter is struck by the exacting nature of the work involved in vetting the draft Bill and accompanying documents for competence and compliance with the Parliament’s Standing Order requirements, and the extent to which it calls for people from several different disciplines to work at speed to settle a wide variety of documents. Once the Bill has been introduced, the Clerk to the Bill Committee undertakes a significant administrative task in dealing with Promoters and objectors throughout the Bill’s process. No matter what efforts a Promoter may make to keep paperwork to a minimum, **tie**’s experience is that the volume of paper produced for the purpose of a Private Bill promotion is large. Quantity apart, much of the material is of a highly technical nature. All told, while it is the nature of an MSP’s role to be able to assimilate unfamiliar information rapidly, the work involved in assimilating all necessary material and hearing evidence must be considerable.

4. Against that background, the Private Bill system has served its purpose rather well. Notwithstanding delays for a variety of reasons largely unconnected with the Private Bill procedure itself, it is a matter of fact that each of the four substantial projects (Stirling-Alloa Kincardine Railway, the two Edinburgh Tram routes and the Waverley Railway) that have been authorised since 2001 has completed its passage from introduction to Final Stage within time periods that compare favourably with, and may well be better than, could be expected to be achieved by the comparable planning process from application to the giving of planning permission for a project of comparable size. So far as a Promoter is concerned, the work involved is different from that required on the planning context, but not greatly so, and the volume of work whilst considerable may overall be less.

Why change to Transport and Works Orders?

5. It might therefore be asked why the change to an order-based procedure as proposed in the Bill is desirable. It is a change that **tie** supports. For the reasons just given, the
present procedure is supportable and productive and tie sees no difficulty in continuing to work within it. However, private legislation is by its nature out of the Parliament’s normal run. The procedures have to be made to fit for purpose. This means that processing a Private Bill produces process-driven strains which could be avoided were projects to be processed through a more dedicated procedure. tie supports the Bill’s proposals as introducing such a procedure for Scotland.

**Particular issues**

The following are particular issues that tie has identified. The selection is not comprehensive and is not in order of importance.

6. **Dedicated rules**

The Parliament’s Standing Orders were designed to deal with the procedural requirements of Bills affecting general policy rather than specific private interests. The specific rules for dealing with Private Bills have been grafted on to the main body of rules. They are also to an extent not fully ‘bedded in’, having been fully in operation for only four or five years. By contrast, the planning system offers a long established method for dealing with development schemes both large and small. tie anticipates that the process to be introduced by the Bill is likely to draw on that model (or on the English Transport and Works model, which itself came largely from the English planning regime). tie believes that it will be beneficial to both Promoters and objectors for infrastructure schemes to be governed by dedicated rules the operation of which is widely understood.

7. **Public consultation**

The Parliament has made very clear its expectation that by the time schemes come to the Parliament they should have been the subject of the fullest possible consultation. tie applauds this approach, which it has sought to adopt with all its promotions, especially with the Edinburgh Airport Rail Link Bill. The same level of participation will be required in relation to Transport and Works schemes. The important difference, tie believes, is that the very unfamiliarity of a Private Bill hampers the consultation process because there is a limited public awareness of what is involved. The planning process is better understood. As a result, consultees are likely to engage more fruitfully with a consultation process that is linked to a procedure more akin to the planning process. tie is also aware of and supports the mandatory requirement for public consultation under the Planning etc. (Scotland) Bill.

8. **Promoter/objector participation**

It is the nature of the normal Parliamentary process that proceedings are entirely in the hands of MSPs. The Private Bill process, however, imposes constraints in terms of the witnesses who must be called and the time the Committee must afford to individuals. The Parliament’s rules have had to be tailored to cope with, in particular, direct participation in the procedure by Promoters and objectors. The nature of the forum and the time constraints on Committee proceedings make it difficult to accommodate the needs and expectations of such participants. The Transport and Works procedures are likely to provide an inquiry procedure that is designed for just those needs. This is all an aspect of the dedicated nature of the Transport and Works proposals.

9. **Link with planning – enforcement**

One of the issues that has concerned several Private Bill Committees is the question of enforcement of environmental and other obligations given by Promoters. The solution that has evolved is to provide in the Bill that such commitments are to be enforceable as if they were planning conditions. The Transport and Works approach should allow for fuller integration. Compliance with commitments in Environmental Statements that are required
for projects can be dealt with through planning conditions and planning agreements, just as they are in the case of development authorised by planning permission. The Scottish Ministers will also have the ability to secure that certain things (e.g. road improvements) are agreed in advance on the basis that, absent agreement, the Order will not be made. This should allow the Scottish Ministers a greater measure of control and certainty than is available to the Parliament operating the Private Bill procedures.

10. **Length of proceedings and volume of work**

As noted above, tie believes that the Private Bill process works reasonably well. On the basis that the independent Transport and Works reporters will be selected from the Inquiry Reporters Unit, it is sensible to suppose that Transport and Works inquiries will be broadly similar to planning inquiries. Judging by the advice we have been given regarding the planning process, it delivers projects over a period that is at least as long as that for Private Bills, and probably longer.

The more concentrated nature of an Inquiry is also likely to mean that the overall volume of work for the Promoter will be greater under the Transport and Works procedure than for Private Bills. It follows that the resulting volume of material is likely to be greater. This is not to suggest that the benefits of a process are to be measured solely by the volume of paper it produces. An inquiry-based procedure will by the nature of the Inquiry almost certainly produce more technical information and an experienced Reporter will be well placed to report to the Scottish Ministers with his or her report and recommendations.

11. **Developments of national significance**

tie notes the proposals for continued Parliamentary involvement with nationally significant schemes. It is entirely understood that there will be cases where it is only right that the Parliament should decide whether a scheme of national significance is acceptable as a matter of principle and public policy. It appears that any tension that might result from Parliamentary approval coming at the end of the exercise will not in fact arise because of the planning status of the projects to which section 13 of the Bill will apply.

12. **Access to land**

Promoters generally will welcome the policy behind section 18 of the Bill. The complete absence of legal rights for prospective Promoters to carry out the investigations (for example test bores to establish ground conditions) necessary to prepare projects or the Environmental Statements which must accompany them significant and practical difficulties. Such investigations may be required over extensive areas of land way beyond the proposed limits of deviation. A Promoter who cannot secure the agreement of landowners, can be forced to include land within limits of deviation purely because the suitability of the land cannot be ascertained. Similarly, there can be no advantage to anyone in Environmental Impact Assessment being hampered by a landowner who refuses access to land.

Section 18 proposes an administrative process, not simply powers for prospective Promoters. It is appreciated that this is designed to safeguard private rights. tie believes that the proposed system is capable of being implemented without undue bureaucracy.
WRITTEN EVIDENCE TO THE LOCAL GOVERNMENT AND TRANSPORT COMMITTEE IN RESPECT OF

THE TRANSPORT AND WORKS (SCOTLAND) BILL

1 GENERAL

1.1 The South East Scotland Transport Partnership (Sestran) is a statutory transport partnership of the eight Local Authorities largely within the Edinburgh travel to work area, namely the City of Edinburgh, East Lothian, Scottish Borders, Midlothian, West Lothian, Falkirk, Clackmannanshire and Fife.

1.2 Sestran is in full support of the proposal to introduce a Transport and Works Bill for Scotland which is designed to place the Scottish Ministers at the heart of an order making process and thereby avoid the need for private Bills for transport related development.

1.3 SESTRAN recognises the pressures on Parliamentary time and welcomes the proposal for scrutiny of orders to be carried out by the Scottish Office Reporters Unit. This should permit a significant reduction in the elapsed time spent in scrutinising transport proposals under the new process which is particularly welcome.

1.4 In addition, the format likely to be adopted of a Public Inquiry/Hearing should provide an environment that is more familiar to both promoters and objectors and allow a more structured and cost effective use of expert witnesses. It will also provide the comfort that both promoters and objectors require that their case has been given full and comprehensive consideration.

1.5 SESTRAN would like to make a number of detailed point relating to the proposed Bill in addition to these general points and these are outlined below with reference to the clauses in the Bill.

2 SPECIFIC POINTS

2.1 It is noted (Clause 1) that the construction of motorways and major trunk road schemes are not included within the scope of the Bill. While we would agree that the procedure for ministerial approval of orders under the Roads (Scotland) Act 1984 had operated successfully over a number of years and was well understood, there is an argument for including the construction of motorways and major trunk road schemes in the scope.

The primary reasons in support of this argument are:-

The primary reasons in support of this argument are:-
If the construction of a motorway or a major trunk road scheme was a project designated in the NPF as being of national significance, why should a different approval process apply to that scheme? There should be consistency in the way that national projects are consented.

The process under the Road (Scotland) Act 1984 does not allow the local roads authority or the Scottish Ministers to roll up within the consent to construct the road scheme other necessary consents for example any compulsory purchase orders, any traffic regulation orders or any prior approvals. This ‘rolling up’ of the required consents/orders is the benefit of the private bill procedure and is understood to be one of the benefits of the proposals in the Bill.

2.2 It is noted (Clause 1) that the scope of the Bill includes any system using a mode of guided transport that would include guided busways or Bus Rapid Transit. Bus Rapid Transit (BRT) is an intermediate mode lying between modern trams and bus priority schemes. It is likely to include extensive segregation from other traffic to provide high speed and reliability along with high quality stations, real time information, distinctive high quality vehicles, off vehicle ticketing and high frequency. In addition, BRT has the advantage that the vehicles can operate both off and on street thereby providing a high degree of accessibility to potential users. This is in marked contrast to a tram scheme which is fixed to a specific route.

The statutory process for promotion of BRT in England is to use the Transport and Works Act to promote the off street sections and local Road Traffic Regulation Orders to promote the complementary on street requirements. Again, this is in marked contrast to the process for trams where the order can consider all strategic traffic management measures required for the delivery and operation of the tram system.

It is therefore suggested that the consideration of the total route of a BRT proposal should be considered as part of the Transport and Works (Scotland) Bill/Act process to allow a strategic view to be taken of the proposal as a whole. This would include both off street and on street sections and would lead to the powers for complete delivery and operation to be achieved by the promoter as part of one single process. This would still allow local concerns to be considered fully but would potentially streamline the delivery of these complex projects. It is not suggested that the ability to promote orders for on street sections associated with a BRT should be removed from the Road Traffic Regulation Act but that the powers in the Transport and Works (Scotland) Act should be available in addition to allow flexibility of approach. The promoting authority could then choose which legislation to use depending on the circumstances of the project.

2.3 It is noted that reference is made to the ‘relevant authority’ in the draft Bill. This is defined as including Local Authorities but no mention is made of Regional Transport Partnerships. SESTRAN would wish the existence and strategic role of RTPs to be recognised in the Bill.
through specific reference as appropriate. This is particularly important in clause 9(4) covering rights of objectors to an Inquiry, but is also relevant in Clause 4(7) and 12(17).

2.4 The proposals for making orders for access to land for purposes connected with construction, operation or works related to an order contained in clause 18 are welcomed. This has in the past proved to be a problem for promoters particularly in relation to collection of relevant site investigation in advance of definition of limits of deviation.

2.5

3  CONCLUSIONS

3.1 SESTRAN welcomes the proposals for a Transport and Works (Scotland) Bill and believes that this will result in a more streamlined approach to obtaining approval for transport proposals while still ensuring comprehensive scrutiny and providing adequate opportunity for both promoters and objectors to present their case and have it fully considered.

3.2 The references to consultation and public involvement are also welcome and should be in line with good practice adopted by responsible promoters.

3.3 SESTRAN will comment on the Financial Memorandum separately.

Alex Macaulay
SESTRAN Partnership Director

25th Aug. 2006