

Consultation on private legislation for public transport infrastructure developments

Executive of the Council

9 May 2006

Purpose of report

- 1 To seek the Executive's approval of a response to a consultation by the Scottish Executive on revising procedures for the private legislation required for major public transport infrastructure.

Main report

- 2 The Scottish Executive is consulting on a bill to provide the legislative framework to enable Ministers to take principal responsibility for handling applications for transport projects currently requiring private legislation.
- 3 Currently, after a Private Bill has been introduced to Parliament any person or body may object its provisions would adversely affect their interests. Thereafter the Bill is subject to a three stage process; Preliminary Stage; Consideration Stage; and Final Stage.
- 4 As shown by the experience of the Waverley Railway and the Edinburgh Tram Bills the current process takes a significant amount of Parliamentary time, as well as the time and resources of project promoters as well as objectors. There are clear limits to the amount of time MSPs have available for detailed scrutiny of individual projects.
- 5 The length of time taken within the current Parliamentary process is well illustrated by the Private Bill for Tramlines 1 and 2. These were deposited in January 2004 and Royal Assent is anticipated at the end of May 2006, a period of 2 years 4 months which is clearly excessive. In the experience of Council officers involved in the Parliamentary promotion pre-devolution the current system is proving to be lengthier. The costs of extended process are significant in terms of promotion costs but especially in respect of inflation. A one-year saving in promotion times for the Edinburgh Tram for example reduces out-turn costs by around £35m. For a project such as the Airport Rail Link the costs of delay are even greater.
- 6 It is now proposed to replace this system with one based on the 'TWA (Transport & Works Act) -plus model' similar to that which applies in England & Wales for railway, tram, guided busways and inland waterway developments.

- 7 In essence the recommendations seek to replace the Private Bill process with one where Ministers make Orders with Parliamentary approval required at specified times, in which:
- a The promoter of a development notifies affected persons and applies to Ministers for an order;
 - b Objectors have a designated period to raise concerns;
 - c Once this is complete, Ministers decide whether, a) the application is procedurally correct, b) fulfils public interest and other criteria;
 - d If so, an Order is laid before the Scottish Parliament;
 - e Parliament considers the Order and agrees to enable the application to proceed to detailed scrutiny;
 - f Ministers appoint an independent reporter to conduct an inquiry
 - g Ministers decide to accept, modify or reject the reporter's recommendations
 - h Ministers make a final Order for Parliamentary approval.
- 8 It is proposed that these procedures apply to railways, trams, guided busways, and canals. Motorways and major trunk roads would continue to operate under the Roads (Scotland) Act 1984, because, it is argued, it has operated successfully for a number of years.
- 9 The consultation document sets out 7 specific questions, which are addressed in the draft response (see Appendix).
- 10 In general, an initiative to streamline the legislative process for major new railways, trams, guided busways, and canals is to be welcomed, as experience with recent bills has shown how outdated and unwieldy the current process is. It is also consistent to adopt but improve on the process which has applied in England and Wales since 1992 (but which did not apply in Scotland).
- 11 The consultation runs in parallel with the Parliamentary progress of the Planning Bill. This has its own significance in terms of processes for major projects and some cross-references might be useful, even though the Planning process cannot provide powers for land acquisition.

Financial Implications

- 12 None.

Recommendations

- 13 To send a response to the consultation as set out in the appendix to this report and to request Ministers to consider any relationship with the Planning Bill currently before Parliament.

Andrew Holmes
Director of City Development

Appendices	Appendix 1 – Draft response to Scottish Executive
Contact/tel	Chris Day – 0131 469 3568
Wards affected	All
Background Papers	Proposals for a new approach to delivering public transport infrastructure developments

APPENDIX 1

DRAFT RESPONSE TO PROPOSALS FOR A NEW APPROACH TO DELIVERING PUBLIC TRANSPORT INFRASTRUCTURE DEVELOPMENTS

To: Tony Cruikshank, Transport & Works Consultation, Transport Strategy & Legislation Division, 2D- Dockside, Scottish Executive, Victoria Quay, Edinburgh, EH6 6QQ

Dear Mr Cruikshank

PROPOSALS FOR A NEW APPROACH TO DELIVERING PUBLIC TRANSPORT INFRASTRUCTURE DEVELOPMENTS

Thank you for the invitation to respond to this consultation. The City of Edinburgh Council's comments follow.

In general, an initiative to streamline the legislative process for major new railways, trams, guided busways, and canals is to be welcomed, as experience with recent bills has shown how outdated and unwieldy the current process is. It is also consistent to adopt but improve on the process which has applied in England and Wales since 1992 (but which did not apply in Scotland).

With regard to your specific questions:

Q1 Are there any other transport works beyond rail, tram, guided busways and inland waterway developments that should be within scope and if so why?

It is not entirely clear why the same principles should not apply to all modes of transport; we suggest that the significant issue is the scale of the project, and whether it is of national, regional or local importance. This would suggest that roads and airport schemes could be within its scope, OR that the procedures which apply to roads and airports be applied to rail, tram, guided busways and inland waterway developments.

Q2 What reasons exist for lengthening or indeed shortening the 6 month minimum designated statutory pre-application period between the promoter publicising initial proposals and presenting an application for an Order to the Scottish Ministers?

This depends on what is meant by 'publicising initial proposals'. Projects which require to follow the proposed procedure will be significant in scale. Thus 'initial proposals', in the form of a broad concept, are likely to be publicised many months or years before this stage is reached. Otherwise 6 months is a reasonable period between publication of detailed proposals and an application.

Q3 What process should apply to enable a promoter, without a statutory right, to enter land to conduct preliminary investigations?

No comment.

Q4 What documentation should be supplied by the promoter in support of the application? Is there sufficient information contained within the proposals?

We consider that the requirements outlined in the consultation document are sufficient. In practice, we believe promoters would supply considerably more than a bare minimum.

Q5 What are the implications of reducing the time period for objections from 60 to 42 days?

None that are significantly negative.

Q6 Are there any reasons why, once the Scottish Ministers have determined that the application meets the procedural conditions and the specified criteria conditions, that the application should be considered by the Scottish Parliament prior to a public examination of the objections?

We cannot identify any reasons why this would be necessary.

Q7 Are there any reasons for extending Parliamentary consideration and approval of projects beyond those contained within the NPF? Do you agree that it should also be possible for the Scottish Ministers to designate other transport related projects not in the NPF for Parliamentary consideration should they see fit?

As noted in response to Question 1 the significant issue is the scale of the project, and whether it is of national, regional or local importance.

However, there needs to be flexibility to address issues and opportunities which arise outwith the timescale of the NPF. Therefore a mechanism is needed to enable non-NPF projects to be dealt with through the new process. However, this should not be over-used so that a large number of relatively minor and/or local projects end up being required to progress through the new process.

