AIRDRIE-BATHGATE RAILWAY AND LINKED IMPROVEMENTS BILL

CONSIDERATION STAGE WITNESS STATEMENTS: PROMOTER RESPONSE TO GROUP 7

MAPLE OAK PLC (OBJECTION 72)

TOPICS NO LONGER IN DISPUTE

The Promoter understands that all topics remain in dispute.

TOPICS STILL IN DISPUTE

The following topics within this objection remain in dispute and the Promoter’s written evidence on each is now submitted.

GENERAL OVERVIEW

A  General

1. This objection is linked to objection 66 (Edgar Allen Ltd) as it is a situation of a landowner and an occupier with a personal right to occupy under a licence. Edgar Allen Ltd operates a foundry referred to in the objection, which includes plot nos. 766, 767, 768, 771, 772, 773 and 776.

2. The Objector owns the foundry site and has outline planning permission for a multi use development. Although the objection raises concerns regarding the possible impact of the railway on this re-development proposal and the existing foundry, in discussion with the Promoter the Objector has explained that it seeks an agreement with the Promoter to mitigate against the impact of the authorised works on the Objector’s proposed development.

3. The Promoter has now been advised that Edgar Allen Ltd operates the foundry on the basis of a licence which will terminate on 30 March 2009.

4. The Promoter has sought to engage with this Objector and with Edgar Allen Ltd to consider the extent to which it might be possible for the Promoter to address the issues raised by them both. The difficulty for the Promoter has been that the two objections relate to different uses of the same site. Although similar issues are raised by Edgar Allen Ltd and the Objector, the practical mitigation measures sought differ depending on the final use of the site. Until the Promoter received confirmation from the two Objectors as to the future use of the site, it was not possible for the Promoter to reach an agreement with either Objector. This information was not supplied to the Promoter until 3 November 2006.

5. Both parties have now advised the Promoter that the Objector has exercised its option to retain the site and accordingly Edgar Allen Ltd will require to
vacate the site by 30 March 2009. The concerns expressed by the Objector that its future use of the land as a foundry will not be possible reflect a position that will come about as the result of the Objector’s intended implementation of its development proposals. Such concerns will therefore be realised irrespective of the proposed railway development. Accordingly, the Promoter has sought to reach agreement with this Objector on minimising the impact of the railway on the proposed development of the foundry site.

B Compensation

6. This rebuttal refers to the compulsory acquisition and use of land, and other matters that may be the subject of compensation claims. In relation to land of which temporary possession is taken under section 21 of the Bill, compensation will be payable to the landowner in respect of any loss or damage suffered as the result of the possession of the land. This compensation payable under section 21 is additional to any other compensation to which the Objector may be entitled in respect of the execution of the authorised works. With regard to compensation, generally, claims can only be made once powers granted under the Bill are exercised. Any such compensation claim will need to be justified at the appropriate time. The Bill makes no changes to the general law on compensation. Therefore, any such claim will be determined in terms of the Compensation Code. In the event that compensation cannot be agreed then the Objector can refer the matter to the Lands Tribunal for Scotland. Further information on compensation can be found in the Promoter’s Policy Paper on Compulsory Purchase and Compensation.

ISSUE 1 - ACQUISITION OF LAND

A. General

7. This objection relates to land forming part of the site that is presently operated as Bathgate Foundry, which includes plots nos. 766, 767, 768, 771, 772, 773 and 776. The Objector expresses uncertainty regarding the effect of the Bill on plot no. 771. As is shown on the Parliamentary plans, plot no. 771 is within the limits of deviation of Works Nos. 40, 41 and 42. The remainder of the Objector’s land just mentioned is within the limits of deviation with the exception of plot no. 768. That plot is subject to temporary possession as a work space in connection with Works Nos. 1, 40, 41 and 42. The Bill would, therefore, authorise its occupation until one year after completion of those works.¹

8. Section 1.7 of the objection expresses uncertainty as to whether section 21(8) would permit the compulsory purchase of plot no. 768. It would not. Land can only be acquired for the purposes mentioned in section 21(8) if it is

¹ The objector is directed to the shoulder note on sheet no. 41 of the Parliamentary plans, schedule 6 to the Bill and section 21(3).
listed in schedule 5 to the Bill for acquisition for any such purpose. Plot no. 768 is not so listed.

9. The Objector raises issues relevant to land acquisition under various heads in the objection. The following aims to address all of them. Where any paragraph of the objection deals with several issues, this rebuttal deals with them under the appropriate headings below, as stipulated by the Bill Committee. However, as explained above, the Promoter has been advised that the current foundry use of the site will cease on 30 March 2009. Accordingly, the Promoter’s evidence will only address the Objector’s concerns with regard to the potential impact of the railway on the proposed re-development of the site.

B. Limits of deviation

10. In section 1.2 of the objection the Objector takes issue with the power to deviate, both laterally and vertically, on the ground that it will result in greater land take and a greater impact of the authorised works. The majority of the Objector’s land that is to be acquired is required for Works Nos. 40, 41 and 42. Those are roads which will vest in the roads authority and must be constructed to adoption standards to the roads authority’s reasonable satisfaction. Any deviation from the centre lines of these works as shown on the Parliamentary plans will depend on their detailed design. While that has yet to be settled (which will be done in consultation with the roads authority and other interested parties), it is necessary to retain a power to make changes to the line of the works. The authorised undertaker, will both as a good neighbour and as being liable to pay any compensation that might result, limit land take and impact on adjoining land so far as possible to allow successful delivery of the project. For the avoidance of doubt, the power to deviate does not permit the authorised undertaker to stray outside the appropriate limits of deviation.

11. In its written evidence the Objector refers specifically to the extent of the proposed land acquisition and the adverse impacts this will have on the Objector’s development of the site. Loss of car parking space and effects on access are particularly identified. As explained above, the Promoter will seek to achieve a design that addresses these concerns so far as reasonably practicable and consistent with the needs of the railway scheme. If and to the extent that the Objector’s site is affected in the way the Objector fears, the matter would be a compensation issue.

C. Power to acquire land – section 17

12. The issues raised in section 1.5 of the objection relate mainly to the Objector’s discharge of its contractual obligations to Edgar Allen Ltd and the Objector’s development of the site after Edgar Allen Ltd vacates it. Those issues are dealt with under separate headings below.

2 See Bill section 6 and schedule 10.
13. The Promoter is keen to resolve the concerns of the Objector. In order to assist the Promoter in doing so, the Objector has been requested to provide a timetable for its proposed development so that this can be considered along with the timetable for construction of the railway. The Objector has not yet provided this information but has stated that it intends to do so.

D. Acquisition of subsoil rights

14. Section 1.6 of the objection takes issue with the acquisition of subsoil or servitude rights under section 18 of the Bill on much the same grounds as the objection to outright acquisition. As indicated above, those relate to issues dealt with elsewhere in this rebuttal. In relation to the section 18 powers as distinct from the general compulsory acquisition powers in section 17, section 18 is a sub-set of the wider power of outright acquisition. It allows for the acquisition of some lesser interest or right without the authorised undertaker having to acquire the whole of the land outright. This allows for the impact on landowners to be limited where possible and so is a potential benefit for landowners.

E. Power to enter land for survey – section 28

15. The Objector objects to the power to enter land for survey purposes on the same grounds as it opposes compulsory purchase. This indicates a possible misapprehension as to the effect of section 28. This section does not authorise acquisition of any land. It simply enables the authorised undertaker to enter land within Bill limits for the purposes of carrying out the survey and other investigative work outlined in section 28(1), which is required in connection with the design of the authorised works.

16. Many of the activities authorised are not intrusive. To the extent that any may be e.g. the collection of soil samples, the activities in question are not by their nature of particular significance such as to affect the use of the land in the way feared by the Objector. Further, the main purpose of the investigative works is to assist at the design stage. Such works will not therefore cause a timing issue, in relation to the Objector’s own development, that is distinct from any other timing issue that might arise. Indeed, the outcome of such investigations will inform the discussions between the Promoter and the Objector and help to address the Objector’s concerns regarding land take.

F. Further powers of entry – section 29

17. Section 1.10 of the objection objects to what is described as the disapplication of sections 83 to 89 of the Lands Clauses Consolidation (Scotland) Act 1845. In fact, those sections, except sections 86 and 87, do apply to the Bill. However, in relation to entry before completion of a

---

3 See section 46 (1)(b).
purchase (which is the situation addressed by section 29), the procedures in the 1845 Act are simplified and modernised in a way that has been done generally in England and Wales and which is standard in legislation of this sort. The basic requirements have not been altered. In particular, the obligation to make an advance payment on account of compensation is expressly reserved. This may meet the Objector’s real concern with this section.

G. Period for compulsory acquisition of land – section 32

18. The objection seeks a five year period for the compulsory purchase powers. In its Preliminary Stage Report the Bill Committee indicated its view that the compulsory purchase powers should be for five years with the ability to extend for up to a further five years. The Promoter has nothing to add to the evidence provided at Preliminary Stage on this matter.

Witnesses

19. The witnesses for the Promoter on this topic are: Elaine Hunter and Karen Gribben. The Promoter estimates its evidence on this topic lasting 5 minutes.

ISSUE 2 - BUSINESS OPERATIONS

20. In section 1.1.3 of the objection and elsewhere the objection claims that the Bill’s proposals will adversely affect the operations currently carried on at the site. Edgar Allen Ltd (objection 66) occupies the site under licence from the Objector and seeks an agreement with the Promoter to mitigate against the impact of the authorised works on the foundry operation there.

21. Edgar Allen Ltd.’s use of the site as a foundry will cease on or before 30 March 2009. The Promoter is aware that the foundry operator is seeking an undertaking that there will be no disruption to its business until 30 March 2009 (including not serving a notice of entry or carrying out works which affect access). The Promoter is unable to provide the undertakings requested. If the Act is passed, it will be for the authorised undertaker to implement the powers in accordance with the requirements of the Project. The Promoter draws attention to the projected start date mentioned in paragraph 53 below.

22. That said, there is no wish to cause unnecessary disruption. To that end, the Promoter intends that the authorised undertaker should maintain regular contact with those affected in order to inform and share relevant information. This will include the Objector. The Promoter would agree to take account of

---

4 See Explanatory Notes paragraphs 155 to 163.
5 Section 29(5)
6 The objector is referred to paragraphs 216, 217 and 218 of the Preliminary Stage Report, extracts attached.
the information gleaned through such consultation, but could not undertake invariably to accommodate the operational requirements of the foundry during its final years of operation.

23. The Objector owns the site and has outline planning permission for a multi use development. The Objector refers to its desire to find ways to mitigate against the impact of the authorised works on this proposed development. The foundry and the Objector’s proposed development are incompatible and it is not possible for the Promoter to cater for both in formulating the detailed design of the railway.

24. The Promoter has been advised that Edgar Allen Ltd.’s licence requires it to vacate the site by 30 March 2009. As the foundry use will require to cease in any event, it is appropriate for the railway design to take account of the proposed development, leaving the impact of the railway on the foundry to be dealt with as a matter of compensation.

Witnesses

25. The witnesses for the Promoter on this topic are: Elaine Hunter and Karen Gribben. The Promoter estimates its evidence on this topic lasting 5 minutes.

ISSUE 3 - ACCESS

26. The objection asserts that the Bill works will seriously compromise access to the site and create major disruption. Access to the Bathgate Foundry site will be maintained throughout the construction period. The Bill as submitted contains no proposals to compromise access from the Bathgate Foundry site to the existing public road (B7002, Whitburn Road). The permanent stopping up powers between points 106 and 107 will only be exercised once the proposed new underbridge and associated access road has been constructed to Bathgate Foundry. At no point will access to the Foundry be prevented by the proposed works.

27. At a meeting with the Objector on 31 October 2006, the Promoter confirmed that it would be agreeable to examine road alignment alterations to suit the developer if the realignment, including alternatives to the proposed roundabout within the foundry site, remained within the currently drawn limits of deviation on the Parliamentary plans, or by agreement with the landowner for proposals outwith the limits of deviation. The Promoter has noted the proposals in the plan attached to the Objector’s written evidence, which can be discussed with the Objector.

28. The written evidence also seeks the early construction of the proposed access route so as to minimise impact on the Objector’s development of its site. The Objector’s concerns in this regard may be alleviated by paragraph 26 above. In any event, timing so far as can be ascertained at present is as
mentioned in paragraph 53 below. It would not be appropriate, however, for the Bill to prescribe a timescale for construction of the access.

29. On Friday 15th December 2006, the Promoter held a telephone conference with the Objector and its agent to discuss the objection. The Objector’s main concern was stated to be that it needs to enter into commitments for its own development and needed certainty regarding construction timings, in particular in respect of the road. The Promoter offered an undertaking that whichever party was on site first could construct the road to adoptable standard. The Promoter stated that it needed to reserve its position to acquire land to construct the works to safeguard its position in the event of the Objector failing to undertake the works prior to construction of the railway or to construct the works to the required standard. The Objector is considering its position.

Witnesses

30. The witnesses for the Promoter on this topic are: Keith Sheridan and Hugh Wark. The Promoter estimates its evidence on this topic lasting 5 minutes.

ISSUE 4 - CONTRACTUAL OBLIGATIONS

31. Throughout the objection the Objector states its concern that the impacts on the foundry will prevent the Objector from discharging its contractual obligations to Edgar Allen Ltd. The effect of the proposals on the existing business operations at the site and access are described in Issues 2 and 3. As explained therein, the Promoter cannot provide a commitment that there will be no disruption to the foundry operations prior to the operation ceasing on or before 30 March 2009. However, the Promoter will consult with Edgar Allen Ltd and take account of the information gleaned through such consultation but could not undertake invariably to accommodate the operational requirements of Edgar Allen Ltd during the licence period.

32. In the event that the foundry does in fact suffer some adverse impact from the works, that will be an issue for compensation as between Edgar Allen Ltd and the authorised undertaker.

Witnesses

33. The witness for the Promoter on this topic is: Karen Gribben. The Promoter estimates its evidence on this topic lasting 5 minutes.

ISSUE 5 - RETAIL AND RESIDENTIAL DEVELOPMENT

34. The Objector has already established the principle of multi use development. While it may be correct that the acquisition of land for the railway will mean that the Objector has less land than it might for
development purposes, its outline planning application takes account of the
development of the railway. Accordingly, the acquisition of land for the
railway, the development of the railway and the operation of the railway
thereafter are not inconsistent with the Objector’s proposed development. If
and to the extent that the proposed land acquisition, in particular for the
access road, has adverse effects on the Objectors’ proposed development,
this is an issue of compensation.

35. The Objector has made a number of assertions as to the effect of the loss of
land on its ability to develop the land. Not all of these are accepted by the
Promoter. These issues would be determined in a claim for compensation
(see above) and are not considered further here.

36. The Promoter notes from the Objector’s written evidence that the Objector is
seeking screening and noise mitigation measures to be carried out as part of
the railway scheme rather than by the Objector within its own development.
The design of the authorised works at this point can be discussed with the
Objector, but it must be for the Objector to comply with the conditions
attached to its planning permission, which are understood to place the
burden of providing such mitigation on the developer of the foundry site.

37. The written evidence also expresses concern about construction noise and
vibration and working hours. This will be governed by the draft Code of
Construction Practice. This concern is addressed in the following
paragraphs:-

Noise and Vibration - General Overview

38. The Promoter has prepared a draft Noise and Vibration Policy which sets
out in detail how the Promoter will address the noise and vibration impacts
of the Works which will be authorised by the Bill. The Promoter has also
prepared a draft Code of Construction Practice which prescribes best
practice in respect of the construction of the railway, including the adoption
of the best practicable means\textsuperscript{7} to control noise and vibration and dust from
construction of the authorised works. The draft Noise and Vibration Policy
and draft Code of Construction Practice are evolving documents which are
undergoing consultation with local authorities and other mandatory
consultees. They will undergo further iterations before being finalised.

39. The Promoter places great value on the views of those who are likely to be
affected by the project and has conducted an extensive consultation
exercise as part of this project. The Promoter has met with the Objector to
explain the impact of the project on the Objector’s property and the
mitigation measures which are likely to apply. The Promoter has also written

\textsuperscript{7} Best practicable means is defined in Section 72 of the Control of Pollution Act 1974 as those measures which are
"reasonably practicable having regard among other things to local conditions and circumstances, to the current state of
technical knowledge and to financial implications". Further, in respect of Network Rail’s statutory duty to safely operate and
maintain the railway network, the safety and integrity of the railway shall be key considerations
to the Objector to provide a detailed explanation of these effects and mitigation measures.

40. As part of the Promoter’s continuing commitment to consultation, the draft Code of Construction Practice includes a communications strategy. This includes the appointment of Community Liaison Officers, the establishment of information centres, the continuation of the Airdrie-Bathgate website and helpline, regular newsletters and community forums. Owners of properties which the Promoter considers may be affected by construction works will be advised in advance of when such works will take place.

41. It is the intention that the authorised undertaker’s environmental commitments, including its obligation to comply with the draft Noise and Vibration Policy and the draft Code of Construction Practice, should be legally binding on the authorised undertaker so that their requirements can be enforced effectively. As regards noise, in addition to any provision in the Bill the local authorities have regulatory functions under the Control of Pollution Act 1974 or alternative process. These will apply to the authorised works. In addition, at the Preliminary Stage, the Promoter stated in its evidence that it would wish the Bill to include appropriate procedural and enforcement provisions\(^8\) and in its Preliminary Stage Report the Bill Committee indicated its intention to amend the Bill in this regard.\(^9\)

**Construction Noise**

42. The Promoter has prepared and submitted to the Bill Committee a draft Code of Construction Practice which makes provision for minimising noise disturbance. The Promoter is consulting on the content of the draft with the local authorities and other relevant bodies. Chapter 7 of the draft Code of Construction Practice identifies noise and vibration requirements. As part of the draft Code of Construction Practice, Contractors will require to prepare Environmental Management Plans, including a Noise and Vibration Plan. The Noise and Vibration Plan will identify:

- those activities likely to generate noise and vibration;
- the levels of noise and vibration likely to be generated;
- any sensitive locations close enough to the Works to receive noise and vibration; and
- the mitigation measures to be adopted.

43. The draft Code of Construction Practice requires that construction works comply with Network Rail Company Standard NR/GN/ENV/00023 (which specifies how contractors should implement best practicable means for the control of noise on construction sites) and BS5228 (which sets out good

---

\(^8\) Promoter’s response to Committee questions, Annex D, Question 19, copy appended.
\(^9\) Preliminary Stage Report paragraph 204, relevant extract appended.
practice for noise and vibration control on construction and open sites.) A hierarchy of mitigation measures will be adopted, the precise nature of which will be dependent on individual site circumstances and will be determined at the detailed design stage. Such measures may include:-

- Contractors’ plant being sited and operated in a manner which will minimise noise nuisance to those on the site and in adjacent occupied buildings;
- effective attenuation of noise from plant by means of efficient silencers, mufflers, acoustic linings, shields, enclosures or screens;
- the use of low noise emission machinery where feasible;
- orientation of plant away from the noise sensitive receptors;
- any machines which are used intermittently being shut down between periods of activity; and
- all machinery will be well-maintained (abnormal increases of noise are often associated with wear and tear/indicative of mechanical failure).

44. The draft Code of Construction Practice requires that the Contractor submit a Noise and Vibration Plan which satisfies the requirements of Network Rail Company Standard NR/GN/ENV/00023 “Construction Noise Mitigation through the Section 61 consent process” prior to the commencement of works. Once submitted the Project Manager will review and approve the Noise and Vibration Plan. This plan will be submitted to the relevant Local Authority in line with either the Section 61 consent process or an alternative process as agreed with the Local Authority.

45. The draft Code of Construction Practice refers to Noise Limits in Section 7.5. This section states the maximum noise levels measured 1m from any occupied dwelling or other building used for residential purposes generated by construction plant and equipment, with the exception of existing railway.

46. Certain necessary works may involve an unavoidable requirement for noisy work that exceeds these noise limits. Such requirements for noisy work shall be incorporated in the Contractor’s Noise and Vibration plan and agreed with the local authority either through the Section 61 consent process or alternative process.

47. Given the Promoter’s extensive experience of developing railway projects, it recognises the importance of ensuring that neighbours are kept informed about the project and its likely impact on them. Accordingly, the draft Code of Construction Practice requires that occupiers of nearby properties which would be adversely affected by construction noise be informed in advance of the works taking place and their likely duration. Notification will include a description of the work to be carried out, measures that will be taken to control noise or other disturbance, and the proposed hours of working.
48. The Contractors' Noise and Vibration Management Plan will also set out the monitoring regime to be adopted during the works for acceptance by the Network Rail Project Manager prior to commencement of the works. The monitoring regime is part of a process of securing compliance with best practicable means and that any consented noise levels are adhered to and that the Network Rail Project Manager can audit these.

49. The combination of the measures outlined above reflects best practice and will ensure that noise disruption during construction is minimised. It is recognised that communication with affected persons is a key element of this process.

Construction Vibration

50. As with construction noise, the draft Code of Construction Practice requires contractors to prepare Environmental Management Plans, including a Noise and Vibration Plan. The likely content of the plan is set out in paragraph 42 above.

51. In the construction phase, the draft Code of Construction Practice places limitations on both the averaged vibration dose (which is related to low adverse comment by householders subject to the vibration) and peak vibration magnitudes, which have been set at magnitudes well below damage thresholds and might be masked in the averaged data.

52. The draft Code of Construction Practice requires that contractors specify in their Noise and Vibration Plan how they will use best practical means to avoid vibration levels as follows:
   - On structural damage grounds ground borne peak particle velocities at the base of existing local residential properties, shall not exceed the limit of 5 mms$^{-2}$ ppv set in British Standard BS5228: 1992 part 4; and
   - On vibration nuisance grounds at nearest residential properties a predicted VDV of 0.4 ms$^{1.75}$ should not be exceeded for daytime use and 0.26 ms$^{1.75}$ should not be exceeded for night-time use. This conforms to Vibration Dose Values as specified in BS6472:1992 that result in a "low probability of adverse comment" not being exceeded.

53. To ensure that vibration levels are not exceeded, a programme of on-site monitoring will be instigated which will focus on sites where it is predicted that levels could be exceeded and properties closest to potential sources of vibration. These measures will ensure so far as practicable that construction vibration levels are minimised.

54. The above matters are the inevitable effects of the measures necessary to ensure that the railway and associated works can be completed.
Programming

55. The Promoter has met with the Objector to understand the Objector’s concerns regarding the impact of the railway. The Promoter understands from its discussions with the Objector that the Objector wishes to commence work at the foundry site on 1st April 2009. The construction phase for the railway scheme is proposed to run from early 2008 with substantive completion by autumn 2010. The phasing of construction is not defined in detail as yet, but the Promoter has confirmed that it is willing to take account of the Objector’s proposals within the more detailed phasing strategy and to enter into agreements on construction phasing so far as is reasonably practicable having regard to the needs of the project. At the meeting, the Objector intimated that it would supply the Promoter with a programme detailing the clean up operation of the foundry site. This would allow the Promoter to consider the interface between the Objector’s proposals and the Bill works programme. This information has not yet been received.

56. At the meeting, the Promoter further suggested that the parties might enter into a formal agreement setting out the manner in which the parties will work together to agree the works and timing of their respective projects. This would give the Objector comfort to remove the objection and have clarity on when these details would be resolved. The Promoter notes from the Objector’s written evidence the issues which the Objector considers should be covered by such an agreement.

57. The Promoter considers it has offered a resolution to all issues raised by the Objector and awaits its response. Therefore, the Promoter considers this objection to be capable of resolution.

Witnesses

58. The witnesses for the Promoter on this topic are: Karen Gribben, Dr Bernadette McKell and Hugh Wark. The Promoter estimates its evidence on this topic lasting 5 minutes.
APPENDIX

AIRDRIE-BATHGATE RAILWAY AND LINKED IMPROVEMENTS BILL

Preliminary Stage

Extract from Promoter’s Response to Committee’s questions, Annex D

19. While it will be for this Committee to determine what amendments are made to this Bill at phase two of Consideration Stage, what consideration has the Promoter given to indicating a commitment to propose draft amendments to the Bill that would attach the environmental statement, code of construction practice, noise and vibration policy and Crichel Down Rules to the Bill?

The Promoter considered the issues raised in this question at the time the Bill was prepared, and they have been under review since. The question effectively falls into two parts, because the treatment of the Crichel Down Rules is a quite different topic from the rest.

Commitment to environmental statement, code of construction practice and noise and vibration policy

The Promoter is committed to providing the works as contemplated by the Environmental Statement with the same or an equivalent level of mitigation as that which the Environmental Statement recommends. The code of construction practice and a noise and vibration policy come within this commitment as being essential mitigation tools contemplated by the Environmental Statement. The Promoter is aware of the way in which the Edinburgh Tram and Waverley Acts have provided for similar commitments to be included as statutory duties on the face of the Bill. The Promoter would wish to test the precise form of the specific amendments, but in principle would be pleased to see its environmental commitment made plain in this way. The Edinburgh Tram and Waverley Acts also dealt with the question of enforcement by going via the planning process. This course commends itself to the Promoter as applying a tried and tested enforcement mechanism which is known to be effective. However, the Promoter is conscious of the need for local planning authorities to be sufficiently comfortable with this process for it to operate. The Promoter will accordingly defer making any specific suggestions to the Committee in this regard until it has completed further consultations with the affected local authorities.
Extract from Preliminary Stage Report

Conclusion

204. The promoter is invited to—

- note our intention to amend the Bill requiring the authorised undertaker to—
  - submit the COCP (which as a minimum will confer the standards of protection and mitigation considered by the Committee at Consideration Stage phase two) to the local planning authorities for approval before commencing the works. The local authorities will be required to consult SNH and SEPA in considering whether to approve the code. Once approved, the authorised undertaker will be required to use all reasonably practicable means to ensure that the works are carried out in accordance with the code; and
  - use all reasonably practicable means in applying, as a minimum, the standards of protection and mitigation set out in the NVP.
AIRDRIE-BATHGATE RAILWAY AND LINKED IMPROVEMENTS BILL

Preliminary Stage

Extract Preliminary Stage Report
Duration of compulsory purchase powers

216. The important issue here is whether the promoter has proved that a fixed period of 10 years is necessary for the specific purposes of this particular scheme. We are not convinced. While we are content that 10 years may be a reasonable period of time for such powers to be exercisable, we do not accept that it should be so fixed in the Bill as the promoter has done. We do not accept that this provides certainty to landowners and others. We believe that the fixed time period should be reduced to five years, to be extended on application to the Scottish Ministers to extend for a further period of time of up to five years. If the Scottish Ministers agree, this extension would be granted in subordinate legislation. This would still give the promoter a maximum of 10 years for permitted development and compulsory acquisition.

217. The promoter is working towards the railway being operational in 2010. It would appear unnecessary for such powers to extend for possibly a further seven years beyond that unless some justification is given. If the railway is not commenced by 2012 (assuming this Bill received Royal Assent in 2007) when these powers would expire then it is only right that the promoter is held accountable for this. It should explain and justify to the Scottish Executive why such powers require to be extended beyond five years. In addition, this Parliament would be given the opportunity to require justification before the subordinate legislation came into force.

Conclusion

218. The Committee intends to bring forward the necessary amendment to section 32(1) and is minded to similarly amend section 40(2) at Consideration Stage phase two to give effect to our recommendation above.