Waverley Railway (Scotland) Bill Committee

1st Report, 2005 (Session 2)

Preliminary Stage Report on the Waverley Railway (Scotland) Bill

Volume 1: Report
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## Contents

### Volume 1

**REMIT AND MEMBERSHIP**

**PRELIMINARY STAGE REPORT**

- **Function** 1
- **Brief description of Bill** 1
  - Compulsory purchase 3
  - Approach taken by Committee 3

**General principles of Bill**

- Approach by promoter and option appraisals 4
- Submission of business case 7
- Overview of business case and STAG process 8
- General overview of Bill and need for the railway 9
- Economic development and social regeneration 10
- Tourism 12
- Connectivity, accessibility and social exclusion 14
- Housing provision assumptions 16
- Developer contributions 21
- Route options/choice of stations 23
- Stow station 26
- Railway integration with other modes of transport 28
- Viability of Borders-Edinburgh bus service 30
- Patronage forecasts and revenue yield assumptions 31
- Project cost overrun 34

**ECHR**

- Article 1 Protocol 1 38
- Article 8 39

**Should the Bill proceed as a Private Bill**

- Scope of the Bill 40
Adequacy of accompanying documents 41
Promoter’s Statement 43
Promoter’s Memorandum 48
Maps, plans and sections and Book of Reference 50
Estimate of Expense and Funding Statement 51
Environmental statement 51
Appropriate assessment 54

Preliminary consideration of objections 56

Summary and recommendations 58

Annex A: Minority report 62

Volume 2

ANNEXE B: MINUTES

Minutes - 10 February, 1st Meeting, 2004 (Session 2)
Minutes - 29 April, 2nd Meeting, 2004 (Session 2)
Minutes - 12 May, 3rd Meeting, 2004 (Session 2)
Minutes - 20 May, 4th Meeting, 2004 (Session 2)
Minutes - 28 June, 5th Meeting, 2004 (Session 2)
Minutes - 16 September, 6th Meeting, 2004 (Session 2)
Minutes - 23 November, 7th Meeting, 2004 (Session 2)
Minutes - 14 December, 8th Meeting, 2004 (Session 2)
Minutes - 31 January, 1st Meeting, 2005 (Session 2)
Minutes - 28 February, 2nd Meeting, 2005 (Session 2)
Minutes - 7 March, 3rd Meeting, 2005 (Session 2)
Minutes - 14 March, 4th Meeting, 2005 (Session 2)
Minutes - 21 March, 5th Meeting, 2005 (Session 2)
Minutes - 27 April, 6th Meeting, 2005 (Session 2)
Minutes - 1 June, 7th Meeting, 2005 (Session 2)
Minutes - 22 June, 8th Meeting, 2005 (Session 2)
Minutes - 29 June, 9th Meeting, 2005 (Session 2)

ANNEXE C: ORAL EVIDENCE

10 February 2004 (1st Meeting, Session 2 (2004))
29 April 2004 (2nd Meeting, Session 2 (2004))
12 May 2004, (3rd Meeting, Session 2 (2004))
28 June 2004, (5th Meeting, Session 2 (2004))
16 September 2004, (6th Meeting, Session 2 (2004))
23 November 2004, (7th Meeting, Session 2 (2004))
14 December 2004, (8th Meeting, Session 2 (2004))
31 January 2005, (1st Meeting, Session 2 (2005))
28 February 2005, (2nd Meeting, Session 2 (2005))
7 March 2005, (3rd Meeting, Session 2 (2005))
ANNEXE D: WRITTEN EVIDENCE

General Principles:

Submission by promoter (evidence on behalf of Scottish Borders, Edinburgh and Midlothian Councils)
Submission by Minister for Transport, Scottish Executive
Supplementary evidence from Minister for Transport, Scottish Executive
Submission by Scottish Enterprise
Submission by Scottish Enterprise Borders
Submission by Scottish Enterprise Edinburgh and Lothian
Submission by Borders Tourist Board on General Principles of Bill
Submission by Shawfair Developments Limited
Submission by SESTRAN
Submission by Network Rail
Supplementary evidence from Network Rail
Submission by Strategic Rail Authority
Supplementary evidence from Strategic Rail Authority
Submission by Rail Passengers Committee Scotland
Submission by First Group
Supplementary evidence by First Group
Further supplementary evidence from First Group
Submission by Freight Transport Association on general principles of the Bill
Submission by Waverley Route Trust
Submission by promoter on Corus Report commissioned by Waverley Route Trust
Submission by Waverley Route Trust on promoter’s memorandum on Corus report
Supplementary memorandum by Waverley Route Trust to promoter’s memorandum on Corus report
Submission by promoter on Waverley Route Trust’s supplementary memorandum

Volume 4

ANNEXE D: WRITTEN EVIDENCE

General Principles:

Submission by Campaign for Borders Rail
Submission by Stow Station Supporters
Supplementary evidence by Stow Station Supporters
Promoter’s memorandum on Stow Station Supporters supplementary evidence
Submission by the Parish of Stow Community Council
Submission by Homes for Scotland
Supplementary evidence from Homes for Scotland
Promoter’s memorandum on Homes for Scotland supplementary evidence
Homes for Scotland memorandum on promoter’s memorandum
Promoter’s memorandum on Homes for Scotland memorandum
Homes for Scotland Memorandum on promoter’s memorandum
Promoter’s memorandum on delivery of new housing
Homes for Scotland additional comments on promoter’s memorandum
Submission by Federation of Master Builders
Promoter’s memorandum on housing including Ryden report
Promoter’s memorandum in response to 28 February meeting questions
Promoter’s memorandum in response to 7 March meeting questions on general principles of the Bill
Promoter’s memorandum in response to 14 March meeting questions
Promoter’s memorandum in respect of the general principles
Arup memorandum on promoter’s memorandum
Promoter’s supplementary evidence in respect of the general principles: journey time comparisons
Promoter’s memorandum in respect of further questions by the Committee relating to housing and patronage

Volume 5

ANNEXE D: WRITTEN EVIDENCE

Scope of the Bill and accompanying documents:
Extract from promoter’s memorandum on objector comments on accompanying documents
Promoter’s memorandum on whether Bill should proceed as a Private Bill
Promoter’s memorandum on further questions on Scope of the Bill
Promoter’s memorandum on further questions on ECHR
Comments by residents of Victoria Gardens, Newtongrange
Comments by Paul & Christine Baxter
Comments by Mr & Mrs Street
Promoter’s memorandum on objector comments
Promoter’s memorandum on further questions on Promoter’s Statement
Promoter’s memorandum on further questions on maps, plans and sections, and Book of Reference
Promoter’s memorandum on questions on consultation
Victoria Gardens residents’ response to promoter’s memorandum on questions on consultation
Still Haugh residents’ response to promoter’s memorandum on questions on consultation
Promoter’s memorandum on notification: Comparison with Channel Tunnel Rail Link Bill
Report by LandAspects on referencing review
Promoter’s memorandum on referencing review
Still Haugh residents’ response to promoter’s oral evidence
Terraquest report on review by LandAspects
Opinion of Senior Counsel for Scottish Borders Council on land referencing
Promoter’s evidence on referencing: letter from Registers of Scotland
Volume 6

ANNEXE D: WRITTEN EVIDENCE

Business Case:

Non-technical summary of the outline business case
Analysis by Arup of the outline business case
Promoter’s memorandum on Arup analysis of the outline business case
Arup memorandum on promoter’s memorandum on Arup analysis outline business case
Committee’s clarificatory questions
Promoter’s memorandum on Committee’s questions
Promoter’s memorandum in response to further clarificatory questions on business case
Promoter’s memorandum in response to clarificatory questions on business case (Gorebridge)
Promoter’s Memorandum on Arup request on revenue and patronage figures
Halcrow patronage figures
Comments by Mr & Mrs Street on business case
Comments by Symon of Edinburgh on business case
Comments by James Kirkness on business case
Comments by Scottish Natural Heritage on business case
Promoter’s memorandum on objectors’ comments on business case

Volume 7

ANNEXE D: WRITTEN EVIDENCE

Environmental Statement:

Committee’s questions to promoter on environmental statement
Promoter’s supplementary memorandum in response to Committee’s questions on environmental statement
Promoter’s supplementary memorandum in response to Committee’s questions on project description
Promoter’s supplementary memorandum in response to Committee’s questions on related development
Promoter’s supplementary memorandum in response to Committee’s questions on environmental processes
Promoter’s transport assessment
Promoter’s transport assessment: Executive summary
Promoter’s memorandum on further questions
Promoter’s memorandum on railway regulation
Promoter’s memorandum on questions on appropriate assessment
Promoter’s supplementary memorandum on questions on appropriate assessment
Scottish Borders Council memorandum on appropriate assessment
Promoter’s memorandum in respect of the River Tweed cSAC Appropriate Assessment
SNH progress report to the Committee
Volume 8

ANNEXE D: WRITTEN EVIDENCE

Environmental Statement:

Peer review by Casella Stanger on noise and vibration and local air quality chapters of environmental statement
Promoter’s memorandum on Casella Stanger peer review
Casella Stanger response to promoter and objector comments
Comments by residents of Victoria Gardens, Newtongrange
Comments by Drs Wyllie and Mr & Mrs Combe
Comments by Glenfield Residents Association
Comments by Robin Bull
Comments by Mr & Mrs Street
Promoter’s memorandum on objector comments
Comments by residents of Still Haugh, Fountainhall
Promoter’s memorandum on Still Haugh comments
Comments by Still Haugh on Promoter’s memorandum

Volume 9

ANNEXE D: WRITTEN EVIDENCE

Environmental Statement:

Scottish Environmental Protection Agency
Scottish Natural Heritage
Historic Scotland
Promoter’s memorandum on environmental regulator comments
Promoter’s concept landscape design
Comments by SEPA on concept landscape design
Comments by SEPA on promoter’s memorandum
Comments by SNH on promoter’s memorandum
Comments by Historic Scotland on promoter’s memorandum
Scottish Natural Heritage statement
Waverley Railway (Scotland) Bill Committee

Remit and membership

Remit:

To consider and report to the Parliament on the Waverley Railway (Scotland) Bill.

Membership:

Tricia Marwick (Convener)
Ted Brocklebank
Gordon Jackson
Christine May (Deputy Convener)
Mike Pringle (to 6 May 2004)
Margaret Smith (from 6 May 2004)

Committee Clerking Team:

Clerk to the Committee
Fergus Cochrane

Support Manager
Jennifer Gourley

Administrative Support
Stephen Fricker
The Committee reports to the Parliament as follows—

1. The Waverley Railway (Scotland) Bill was introduced on 11 September 2003. It is a Private Bill being promoted through the Scottish Parliament by Scottish Borders Council (the promoter) under the procedures set out in Rule 9A of the Parliament’s Standing Orders and the Guidance on Private Bills.

2. Following the introduction of the Bill there was a 60-day objection period that concluded on 10 November 2003 when 118 admissible objections were lodged (see ‘Preliminary consideration of objections’ for more details).

Function

3. At Preliminary Stage, the Committee has three functions as set out in Rule 9A.8, namely—

   to consider and report on the general principles of the Bill;

   to consider and report on whether the Bill should proceed as a Private Bill, that is to say:

   • is the purpose of the Bill to obtain for the promoter particular powers or benefits in excess of or in conflict with the general law?
   • do the accompanying documents to the Bill satisfy the technical criteria that are set down in the Standing Orders and are they adequate to allow proper scrutiny of the Bill?

   to give preliminary consideration to all objections and reject any objection where the objector’s interests are, in the opinion of the Committee, not clearly adversely affected by the Private Bill. The Committee will also give full consideration to those objections (or parts thereof) that relate to the whole Bill.

Brief description of Bill

4. The principal objective of the Bill, as set out in the Promoter’s Memorandum (one of the accompanying documents lodged with the Bill), is—
‘to give the promoter statutory authority to construct a railway between a point in Midlothian immediately south of Newcraighall and Tweedbank in the Scottish Borders, largely along the route of the former Waverley railway. In connection with these works the Bill also provides for the closure of some roads and footpaths that cross the route and the construction of various ancillary works along the route as necessary to accommodate the railway. Provision is also included for the compulsory acquisition of land for the scheme, including land for new stations at Shawfair, Eskbank, Newtongrange, Gorebridge, Galashiels and Tweedbank which will be constructed as part of the scheme’.

5. The railway, which will provide a passenger service, will be approximately 31 miles in length. The proposed route would follow much of the former Waverley railway route, using remaining bridges, tunnels and track bed. The former railway itself was closed following the 1963 Beeching Report with consent for closure being granted in 1966, passenger and through freight services being withdrawn in 1969 and the track lifted in 1969 and 1970. Closure of the railway left Midlothian and the Scottish Borders as the only regions on the British mainland without a railway station.

6. The scheme is being promoted as the best way of achieving the following objectives1—

- enable ready access to Edinburgh’s buoyant labour market for workers living in the area to be served by the railway;
- provide an incentive to inward investment in the area;
- assist Edinburgh manage its demand for housing by spreading commuter pressure southwards; the railway is essential to prevent such movement resulting in longer car commuting journeys;
- help improve accessibility of the Borders as a "connected place", thereby increasing the attractiveness of the area as a location for business investment;
- increase the potential for future commuter trips to Edinburgh to be made by public transport rather than by car and therefore reducing the projected increase in congestion, particularly in the southern approaches to Edinburgh;
- promote accessibility to and from the Borders and Midlothian to the capital and central belt including the airport;
- stimulate new housing development and assist in the growth of the Borders population including the reversal of the ageing trend of the present population;
- increase local spend in the Borders to increase the vibrancy and sustainability of the community;
- assist with retention of population in the Borders by providing efficient transportation, allowing for commuting, to remove the need for those affected by job losses relocating outwith the area to obtain new employment.

1 Promoter’s Memorandum, paragraph 12
7. While the Bill is being promoted by Scottish Borders Council, the proposals submitted are effectively a joint bid from that council along with Midlothian Council, City of Edinburgh Council and Scottish Enterprise (the ‘Waverley Railway Partnership’). This partnership is advised by Network Rail and First ScotRail.

8. The Bill gives the promoter the power to construct the railway but does not give it permission to operate the railway and its facilities. A licence under section 8 of the Railway Act 1993 is required for this.

Compulsory purchase
9. The Bill provides the promoter with the power to compulsorily purchase land and rights in land for the scheme. Compensation will be payable on the same basis as regards any other compulsory purchase in Scotland. The issue of compensation will be dealt with under separate legislation. Any dispute over compensation levels in respect of land compulsorily acquired will be referred to the Lands Tribunal for Scotland.

10. Not all land required for the scheme will have to acquired permanently, temporary possession of some land will be required during the construction period. The Bill provides the promoter with the power to take such land temporarily.

Approach taken by Committee
11. The Committee held seventeen meetings during the Preliminary Stage, thirteen in Edinburgh, with four of the five oral evidence meetings being held in Galashiels and Newtongrange (two of the areas the railway would pass through). The meeting were held on the following dates: 10 February, 29 April, 12 and 20 May, 28 June, 16 September, 23 November and 14 December (2004), 31 January, 28 February, 7, 14 and 21 March, 27 April, 1, 22 and 29 June (2005).

12. The Committee undertook a site visit along the route of the proposed railway on 28 June 2004. This was extremely useful to members in visualising the proposed route, location of stations and bridges, and the proximity of some properties to the proposed line. The Committee is grateful to Bruce Rutherford from Scottish Borders Council and Douglas Muir from Midlothian Council who accompanied the Committee on its visit and briefed the Committee on the proposed route. Should the Bill proceed to its Consideration Stage then it is likely that a further, more detailed site-specific visit, will be undertaken by the Committee.

13. Parliament officials supporting the Committee also undertook a series of evening meetings with objectors to the Bill to explain the parliamentary processes that Private Bills are subject to and to answer questions and offer procedural guidance. These meetings were held in Galashiels, Newtongrange and Stow.

14. The Committee agreed to invite objectors to submit written evidence on the adequacy of the various accompanying documents to the Bill and the business case. The Committee was keen to ensure that the views of objectors, particularly

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2 Paragraphs 15-21 of the Waverley Railway (Scotland) Bill Explanatory Notes
on the general principles issue (i.e. should there be a railway between Tweedbank and Newcraighall), were expressed and featured in the Committee’s consideration of the Bill.

15. The promoter was invited to submit evidence in response to this. The Committee is grateful to those objectors who engaged with the process in this way and assisted the Committee in broadening its understanding of the issues, concerns and arguments both for and against the railway. Aspects of this written evidence are referred to throughout this report.

16. A large volume of evidence was submitted to the Committee, both before and during the course of its oral evidence meetings. All the written evidence is reproduced in volumes 3-9. The written evidence is available in electronic format only via the Committee’s homepage on the Parliament’s website (www.scottish.parliament.uk/business/committees/waverlyRB/index.htm). All the written and oral evidence has been carefully and thoughtfully considered and has been of invaluable assistance in the Committee’s deliberations on the many issues associated with the project. It is not possible, within the confines of this report, to address every aspect of every piece of evidence.

17. The Committee has been assisted in its consideration of often complex, technical evidence by three external advisers appointed by the Committee. Ove Arup and Partners (Arup) assisted the Committee in its consideration of the business case while Bond Pearce and Casella Stanger both assisted in the consideration of the environmental statement (one of the accompanying documents to the Bill). The Committee is extremely grateful for the valuable assistance given by each of its advisers.

18. The report now turns in more detail to each of the Committee’s Preliminary Stage functions, starting with its consideration of the general principles of the Bill.

**GENERAL PRINCIPLES OF THE BILL**

19. Paragraph 6 above sets out the promoter’s objectives and what it hopes to achieve through the establishment of the railway. In considering the general principles (should there be a railway between Newcraighall and Tweedbank), the Committee must satisfy itself on whether the railway is the best way of achieving these objectives.

**Approach by promoter and option appraisals**

20. The first substantive investigation into the reintroduction of the railway was undertaken in 1999 by Borders Transport Futures. A fuller feasibility study was then commissioned by the Scottish Executive, Scottish Borders Council, Midlothian Council, Scottish Borders Enterprise, Railtrack and Virgin Trains. The study report sought to provide a more comprehensive assessment of the viability of reintroducing a passenger and freight service along part, or the whole length, of the original route (i.e. from Edinburgh to Carlisle). The study made the case for a half hourly passenger service from Tweedbank to Edinburgh.

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3 *Scottish Borders Railway Feasibility Study* (Scott Wilson) (February 2000)
21. The feasibility study also contained the STAG 1 appraisal. The Scottish Transport Appraisal Guidance\(^4\) assesses transport projects such as the Borders railway against five criteria—

- environment
- economy
- safety
- integration
- accessibility

22. The above are supplemented by the objectives set out under the Scottish Executive’s transport portfolio spending priorities to 2008\(^5\)—

- promote economic growth by building, enhancing, managing and maintaining transport services, infrastructure and networks to maximise their efficiency;
- promote social inclusion by connecting remote and disadvantaged communities and increasing the accessibility of the transport network;
- protect our environment and improve health by building and investing in public transport and other types of efficient and sustainable transport which minimise emissions and consumption of resources and energy;
- improve safety of journeys by reducing accidents and enhancing the personal safety of pedestrians, drivers, passengers and staff;
- improve integration by making journey planning and ticketing easier and working to ensure smooth connection between different forms of transport.

23. In November 2000, the Scottish Executive provided £1.865 million from the Public Transport Fund to progress the reinstatement of the railway through the parliamentary process. The Bill before the Committee is the result of this and the outline business case\(^6\) produced by the partnership emerges out of these previous studies and the option and route appraisals and evaluations.

24. The promoter, before settling on the Bill proposal, considered seven transport options—

- do nothing or do minimum
- comprehensive upgrade of the A7 (option 1A)
- selective upgrade of the A7 (option 1B)
- adaptation of former railway to a busway (option 2A)
- upgrade existing bus services (option 2B)
- light rail
- reinstate Waverley railway line (option 3)

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\(^4\) Scottish Transport Appraisal Guidance (Scottish Executive)

\(^5\) Building a Better Scotland Spending Proposals 2005-2008: Enterprise, Opportunity and Fairness

\(^6\) Reconnecting to Secure Our Future (June 2004)
25. The table at paragraph 27 below has been extracted from the promoter’s written evidence and shows the STAG 1 appraisal findings.

26. This written evidence also sets out the promoter’s assessment of each of these options and why it has chosen the railway option. It is not for this Committee to comment on, or offer its assessment of, each of these options and whether one offers more benefit than another. The Committee’s locus is limited to the consideration of whether a railway, which is the promoter’s preferred option and the option that has been presented to the Parliament in the shape of the Bill, is the best way of meeting the objectives set out earlier in paragraph 6.

27. The promoter concludes ‘that having undertaken a systematic study of all the realistic alternatives, that the reinstatement of the Waverley railway is demonstrably the preferred option and indeed the only practical option that meets the requirements of national, regional and local transport and planning policies’.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Option 1A: Comprehensive upgrade of the A7</th>
<th>Option 1B: Selective upgrade of the A7</th>
<th>Option 2A: Adaptation of former railway to a busway</th>
<th>Option 2B: Upgrading bus services</th>
<th>Option 3: Reinstating Waverley railway line</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduce the number of people commuting in single occupancy vehicles within south east Scotland – especially for journeys to and from Edinburgh; but also for journeys to destinations outwith the SESTRAN area;</td>
<td>-</td>
<td>-</td>
<td>+</td>
<td>+</td>
<td>++</td>
</tr>
<tr>
<td>Minimise the overall need for travel, especially by car;</td>
<td>-</td>
<td>-</td>
<td>O</td>
<td>O</td>
<td>O</td>
</tr>
<tr>
<td>Maximise public transport provision and achieve public transport integration and intermodality;</td>
<td>O</td>
<td>O</td>
<td>++</td>
<td>+</td>
<td>+++</td>
</tr>
<tr>
<td>Improve safety for all road and transport users;</td>
<td>+++</td>
<td>+++</td>
<td>+</td>
<td>+</td>
<td>++</td>
</tr>
<tr>
<td>Enhance community life and social inclusion;</td>
<td>O</td>
<td>O</td>
<td>+</td>
<td>++</td>
<td>+</td>
</tr>
<tr>
<td>Maintain existing infrastructure properly in order that it can be fully utilised;</td>
<td>+++</td>
<td>+</td>
<td>O</td>
<td>O</td>
<td>O</td>
</tr>
<tr>
<td>Enhance movements of freight, especially by rail and other non-road modes;</td>
<td>++</td>
<td>+</td>
<td>O</td>
<td>O</td>
<td>O</td>
</tr>
</tbody>
</table>

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7 Promoter’s memorandum on general principles issues (September 2004), vol. 3
8 Promoter’s memorandum on general principles issues (September 2004), vol. 3
28. The STAG 1 appraisal was intended as a scoping exercise to determine whether the options under consideration provided a sufficient match with the planning objectives, could be implemented, and fit with the five criteria referred to above. As the project complied with these planning objectives and the five criteria it is subject to the full STAG 2 process (this involves a more detailed appraisal against Scottish Executive objectives).

Submission of business case
29. In considering its approach to the Preliminary Stage of the Bill the Committee agreed at its first meeting on 10 February 2004 that it would not be possible to consider its approach to Preliminary Stage, and therefore its scrutiny of the Bill, until the business case, required by the Scottish Executive prior to confirming funding commitments, was made available to the Committee. The Committee considered that this document would assist in its consideration, along with other written evidence from the promoter and others, of the Bill’s general principles. The Convener subsequently wrote to the promoter in early April and early May 2004 stating this and the view of the Committee that the business case was required as part of the examination of the need for the Bill and therefore should be submitted as quickly as possible in order for the Committee to progress its Preliminary Stage functions with an aim to completing Preliminary Stage before the summer recess of 2004.

30. The business case was received by the Committee in June 2004. This delay was extremely frustrating to the Committee, as well as to objectors to the

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9 Reconnecting to Secure Our Future (June 2004)
Bill. While a business case is not an accompanying document required by a Private Bill promoter under Rule 9A.2 of Standing Orders, the Committee clearly indicated to the promoter at the outset its request that the document was submitted.

31. Once the business case was received the Committee appointed Arup to analyse and report on the application of the research methodologies used to reach the conclusions outlined in it; examine and report on the conclusions; examine and assess the projected costs of the scheme, and identify any specific areas for further investigation by the Committee.

32. Arup’s report was received in August 2004\textsuperscript{10} and was forwarded to the promoter inviting it to respond. The promoter submitted a memorandum\textsuperscript{11} which was forwarded to Arup for consideration and response.\textsuperscript{12} Further requests for written evidence were made by the Committee to the promoter who provided memoranda in response.

33. However, the Committee at its meeting on 31 January 2005, noted that revised business case data was being considered by the Scottish Executive. This revised data was necessary to ensure consistency with changes to the Scottish Executive’s transport appraisal methodology and, in particular, the change in the appraisal period from 30 years to 60 years. The updated data was received by the Committee on 16 February 2005.\textsuperscript{13}

34. Perhaps the main highlight of the updated business case data was the increase in the overall net present value (NPV) of the railway to £75.3 million and the benefit cost ratio (BCR) to 1.21 (up from 1.01). (NPV allows for the fact that £1 in year 1 is worth more than £1 in year 30 and, in economic terms, is considered to be the more accurate method of assessment. Benefit cost ratio is a ratio that attempts to identify the relationship between the cost of a proposed project and its benefits.)

35. The issues raised in the Arup analysis, the promoter’s responses, and the business case and revised business case data generally are commented upon throughout this report.

Overview of business case and STAG process
36. The background to the submission of the business case is outlined above. As stated, the Committee commissioned an analysis of the business case by its adviser, Arup. That analysis identified concerns relating to the following issues and the methodology used by the business case authors—

- patronage forecasts: a trip rate methodology and a full mode choice model were used to calculate forecasts. Arup was concerned about the significant differences in overall trip generation and generation from individual stations between the methodologies. There were concerns about the

\textsuperscript{10} Analysis by Arup on business case, vol. 6
\textsuperscript{11} Promoter’s memorandum on Arup analysis, vol. 6
\textsuperscript{12} Arup memorandum on promoter’s memorandum, vol. 6
\textsuperscript{13} Halcrow technical note (14 February 2005), vol. 6
appropriateness of comparisons with the patronage growth on other lines and a forecast of 5.5% per annum;

- revenue yield: the promoter has applied a revenue yield that is significantly higher than the yield from other train operators, for example, the yield assumed is about 60% higher than the ScotRail yield;
- capital costs assumptions: lack of detailed breakdown of capital costs, and uncertainty whether the correct level of optimism bias has been applied;
- forecast growth projections: projections do not take account of the change in employment growth for greater Edinburgh;
- sensitivity tests: the impact of a 10% increase in car journey time or the introduction of a city centre toll have a different level of impacts on adjacent stations.

37. These issues are addressed later in the report.

**General overview of Bill and need for the railway**

38. Paragraph 6 outlines the promoter’s objectives. In written evidence\(^{14}\) the promoter also set out the main benefits to the three local authority areas served by the railway (Edinburgh, Midlothian and Borders). These are—

- access to employment: increased access for Borders and Midlothian residents to the Edinburgh jobs market;
- new housing: increased housing development in the Borders and Midlothian and the resultant increase in local expenditure from new residents;
- inward investment: improved connectivity and accessibility to the Borders and Midlothian could impact on the location decisions of businesses;
- benefits to local businesses: increased opportunity and access to Edinburgh by Borders and Midlothian businesses.

39. In addition, the promoter contends that the railway would—

- provide more sustainable commuter travel with added environmental benefits;
- contribute towards, and be a key component in, Edinburgh’s approach to an integrated transport system (coupled with the proposals for the reintroduction of trams) and assist in the easing of congestion in the city;
- assist in creating a younger and growing population in the Borders;
- improve the choice of locations for families and commuters;
- assist in the growth of the tourism market, again, particularly in the Borders;
- spread prosperity, in particular to the Borders and Midlothian.

40. The railway is seen as one of SESTRAN’s (South East Scotland Transport Partnership, a partnership of local authorities whose aim is to pursue transport schemes and issues that require a regional approach through co-operation) key projects in achieving its regional transport objectives.

\(^{14}\) Promoter’s memorandum on general principles issues (16 September 2004), vol. 3
41. Support for the railway was expressed by a number of witnesses that submitted written evidence and gave oral evidence including Scottish Enterprise Borders, Scottish Enterprise Edinburgh and Lothian, Borders Tourist Board and the Scottish Executive. In addition, bodies such as the Waverley Route Trust, Stow Station Supporters and the Rail Passenger Committee Scotland indicated their support for the Bill’s general principles although there were specific concerns and issues raised in evidence by these bodies for example, on the proposed route, and choice of stations. These issues are set out throughout this report.

42. Opposition to the railway, both in principle and to specified aspects of it, was expressed by a large number of objectors. A total of 140 objections were lodged against the Bill (see ‘Preliminary consideration of objections’ for more details). Several objectors submitted written evidence to the Committee on the general principles issue and a panel of objectors gave oral evidence on 14 March 2005.

Economic development and social regeneration

43. The heart of the promoter’s case for the reintroduction of the railway is that it would bring about economic development, prosperity and social regeneration (as highlighted in paragraphs 38 and 39) to Edinburgh, Midlothian and, particularly, to the Borders. This economic and social impact will differ by area, each being markedly different in character and socio-economic composition and with its own issues and challenges both now and in the future.

44. Edinburgh is characterised by tight labour markets and a limited labour supply, with pressure on land, particularly affordable land, for housing. Traffic congestion and related environmental problems are also of concern.

45. Midlothian’s economy is in a period of transition following the decline in the traditional heavy industries such as coal and paper-making to the current development of the service sector and health and pharmaceutical industries. There is also a need to increase levels of inward investment.

46. A low wage, low gross domestic product (GDP) economy exists in the Borders along with a sparse population of which a large proportion is over pensionable age. The economy is narrowly based and offers limited opportunity to the local labour market. A feeling of disconnection from the rest of Scotland and lack of access to the wider Edinburgh economy is prevalent.

47. The promoter contends that the reintroduction of the railway could act as a catalyst for inward investment and long-term economic benefits to the areas. An example of this is the potential local economic spin offs from the railway and the house building programme.

48. The reopening of the Waverley railway is predicted, by the promoter, to create new jobs in both the Borders and Midlothian, with a more modest impact in Edinburgh—

(Note: The tables below show low, mid and high figures. The promoter believes that the mid scenario forms the best indicator of potential impact of the railway but
low and high scenarios have been included to indicate how the impact may change if some assumptions were to change.

Employment impact by area

<table>
<thead>
<tr>
<th></th>
<th>Low</th>
<th>Mid</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Borders</td>
<td>63</td>
<td>96</td>
<td>213</td>
</tr>
<tr>
<td>Midlothian</td>
<td>126</td>
<td>221</td>
<td>308</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>18</td>
<td>23</td>
<td>27</td>
</tr>
<tr>
<td>Total (3 local authorities)</td>
<td>207</td>
<td>340</td>
<td>548</td>
</tr>
<tr>
<td>Scotland as a whole</td>
<td>21</td>
<td>26</td>
<td>32</td>
</tr>
</tbody>
</table>

(Note: The above figures are full-time equivalent and exclude jobs from the construction of new housing.)

49. Increasing local opportunities and providing valuable employment opportunities for local businesses through the creation of the railway is to be supported and, were the project to proceed, the promoter is encouraged to maximise (working within the procurement process) the local economic and employment opportunities from the construction of the railway through the use of local suppliers, firms, services and workforce.

50. The tables below have been extracted from the promoter’s written evidence\(^{15}\) and provide a snapshot of the projected 30-year local economic benefits to each area.

(Note: The figures represent the net present value (NPV) of the railway. The bottom row of the tables for Borders and Midlothian show the NPV where additional housing beyond the approved structure plans has been factored in)—

<table>
<thead>
<tr>
<th></th>
<th>Low</th>
<th>Mid</th>
<th>High</th>
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<tbody>
<tr>
<td>Borders</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>27.8</td>
<td>65.7</td>
<td>111.8</td>
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<tr>
<td></td>
<td>44.8</td>
<td>91.2</td>
<td>145.7</td>
</tr>
<tr>
<td>Midlothian</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>55.2</td>
<td>96.9</td>
<td>136</td>
</tr>
<tr>
<td></td>
<td>66</td>
<td>110.3</td>
<td>151.5</td>
</tr>
<tr>
<td>Edinburgh</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>6.5</td>
<td>8.2</td>
<td>9.7</td>
</tr>
<tr>
<td>Scotland as a whole</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>14.8</td>
<td>23.5</td>
<td>30.6</td>
</tr>
</tbody>
</table>

(Note: above figures in £ millions.)

\(^{15}\) Promoter’s memorandum on general principles issues (16 September 2004), vol. 3
51. This gives an estimated NPV across the three areas of up to £257.5 million. Factoring in the potential new housing, such as the 10,113 houses proposed for completion by 2011 in the Borders and Midlothian, increases the possible NPV to £306.9 million.

Tourism

52. An issue of particular interest to the Committee was the benefits to the local tourism sector through the reintroduction of the railway. The Committee was surprised that none of the objectives of the railway set out in the Promoter’s Memorandum (see paragraph 6) are tourism-specific. While the business case did contain information on tourism, it was mainly through questioning and requests for written evidence by the Committee that a clearer picture emerged on this issue.

53. The tourism industry is worth between £4 billion and £5 billion nationally per annum and, in the Borders alone, generates almost £200 million per annum and employs 3,400 people (around 8% of the workforce). Despite the adverse impact on the industry and the local economy of the 2002 foot-and-mouth disease outbreak, the industry has sought to invest and diversify in recent years.

54. This investment in accommodation, leisure facilities, outdoor events and access has positioned the Borders in attracting more high spending, short break (the Borders is Scotland’s leading short break destination) and niche activity markets and green tourism. For example, the world class mountain biking and downhill racing facilities at Glentress and Innerleithen forests near Peebles and the Southern Upland Way, St Cuthbert’s Way, Tweed Cycle Way and the Eildon Hills all attract high numbers of walkers and cyclists. In addition, the area boasts well known tourist attractions such as Melrose Abbey, Traquair House and Abbotsford House, the former home of Sir Walter Scott.

55. The area contains over 7% of Scotland’s visitor attractions yet attracts only 3% of the visitors. Supporters of the railway claim that the railway would allow the Borders to improve accessibility for visitors and tourists. This would help realise potential that exists for the area and build on the achievements made in recent years in creating the position as the leading short break destination by improving the accessibility of the area’s attractions to potential visitors.

56. Given the strategic target set by both VisitScotland and the Scottish Executive of increasing the size of the industry by 50% by 2015, investing in the necessary infrastructure plays an important part in achieving that target. Scottish Borders Tourist Board stated in its written evidence—

‘although significant improvements have been made to both the marketing of the area and the quality of some of its key tourism products significant potential still exists to improve the region’s share of growth in Scottish and world tourism markets. The area is well placed strategically to build on its recent successes and develop year round, sustainable, UK short break and niche activity business.’

16 Scottish Borders Tourist Board written evidence on general principles, vol. 3

57. Around 33% of tourists visiting the Borders come from Scotland and England, particularly the north east, with overseas visitors accounting for a
relatively small 8%. Yet 96% of visitors travel to the area by car. The promoter believes that the railway will play a central role in enhancing the reputation of the area as a tourist destination, particularly in improving its share of the Scotland and world tourism markets. Research prepared for the promoter\textsuperscript{17} indicates that £690,000 per annum to the local economy could be generated through an additional 5,580 staying visitors and 3,350 day trippers travelling by train to the area each year. This additional income could create and sustain around 14 new tourism related jobs. The research does indicate that these figures are ‘generally cautious’ and that taking the mid and more optimistic scenarios the railway could create 17 and 38 jobs and generate £810,000 and £1,825,000 per annum respectively.

58. The intention of the promoter would be to ‘brand’ the railway to highlight the visitor potential of the Borders, as happens on other scenic routes including the Settle-Carlisle line. An example of this was given by Riddell Graham, the former Chief Executive of the area tourist board, who referred to a recent marketing campaign by VisitScotland promoting a combined city-rural short break with Edinburgh and the Borders being the example shown in the television advert. It is widely accepted that the railway route could be one of the most scenic in Scotland, that in itself could be a tourist attraction.

59. Increased accessibility to and from Edinburgh is vitally important in maximising the potential for increasing tourism in the Borders and in tapping into the Scotland and overseas markets. A railway could open up the Borders to the special and important role that Edinburgh plays in the Scottish tourism market. About half of all overseas tourism trips to Scotland include an overnight visit to Edinburgh and a third of overseas tourism spend in Scotland is spent in Edinburgh. Indeed, the Scottish Executive identified in its \textit{Tourism Framework for Action 2002-2005} that improved transport facilities, infrastructure and services within Scotland for visitors were needed. This was expanded on when a review of the local tourism strategy\textsuperscript{18} highlighted that quality transport was vital to the future success of the tourism sector and that there was an over reliance on car borne visitors.

60. There is the potential for increased tourism, not just from the traditional heritage attractions, but towards outdoor activities such as those referred to earlier. Also, sporting tourists attending Celtic League or other rugby matches in the Borders or rugby supporters staying in the area and then travelling to Edinburgh to attend internationals at Murrayfield. Access to areas not served by the railway such as Peebles, Melrose, Kelso, Jedburgh and Selkirk and more outlying areas could be opened up through the maximisation of integrated bus services from the railway stations. This is particularly important given the number of key tourist centres not directly served by the railway. The railway could allow easier access from the Borders to tourism outlets such as Edinburgh Airport, Stirling and Glasgow.

\textsuperscript{17} \textit{The Reopening of the Waverley Line: Potential Tourism Impact} (The Market Specialists) May 2004 (see Annex 9 of \textit{Reconnecting to Secure Our Future})

\textsuperscript{18} \textit{Review of the Scottish Borders Tourism Strategy 1999-2004} (SQW Limited)
61. The Committee believes that the railway could play an important role in maintaining and potentially increasing growth through increased tourist numbers and the positive local impact on the economy and employment this could have on visitor attractions, shops, restaurants, hotel and bed and breakfast accommodation establishments.

62. Carefully planned integration of the railway and its infrastructure could provide an important and valuable dimension to the area’s economic and social development, particularly through proper promotion and marketing, timetabling and integration with local bus services and with due sensitivity to the surrounding environment.

63. The Committee calls upon the promoter to work closely with VisitScotland covering Edinburgh, Midlothian and the Borders and other key stakeholders to maximise the tourism potential of the railway, particularly in the Borders.

Connectivity, accessibility and social exclusion
64. A common theme arising from the written and oral evidence was the sense of isolation and exclusion felt in the Borders through the lack of connectivity and accessibility to the capital city and beyond and the perceived imbalance in opportunity, advantages and equality felt by Border residents. As Anne Borthwick, Chairperson of the Campaign for Borders Rail, said in oral evidence—

“We are in great danger of being seen as stuck down at the bottom of Scotland, and we want to be part of a whole Scotland. We have a new Parliament and we want to be part of the new Scotland, but unless we have proper transport links, we cannot be.”

65. This is an issue that was of particular importance and concern to the Committee and, perhaps more than most other issues, goes to the heart of whether there should be a railway. The Committee sought evidence from the promoter on how the railway would tackle social exclusion. The promoter set out the broad economic and social condition of the three areas concerned.

66. The Borders population, while increasing overall, is ageing with projections indicating that by 2016 the area’s young and working population will decline faster than the Scottish average. For example, in the 15-59 age group the decrease is estimated at 6.7% in the Borders and 3.5% for Scotland while the population aged 60 and over will increase by 27.1% in the Borders and 18.2% in Scotland. While these are challenges facing the whole country, the promoter believes they are greater in the Borders. The last of the promoter’s objectives is specific to the retention of the population in the area although it is fair to say that each of the objectives is relevant to this particular issue.

67. The area also suffers from a low wage economy with average earnings being 21% lower than the national average, the second lowest of all Scotland’s

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19 Official Report, 28 February 2005, col. 92
20 Promoter’s memorandum on general principles issues (16 September 2004), vol. 3
local authority areas, and GDP 18% lower than in Scotland as a whole\(^\text{21}\). The traditional textile and manufacturing industries have suffered heavy job losses in recent years and there is a low rate of manufacturing output (accounting for only 1% of Scotland’s exports in 2000) and capital expenditure. In addition, 90% of its businesses have fewer than 10 employees and 76% have less than £250,000 turnover per annum. The number of people in full-time employment is falling while the number in part-time employment is increasing.

68. While educational attainment levels are significantly higher than in other parts of Scotland, and the number of school leavers who enter further and higher education is high (although many school leavers access educational opportunities outwith the area), levels of workforce qualifications are low. In addition to young people leaving the area to access education and jobs, there are difficulties in finding suitable affordable, accessible housing locally.

69. A similar picture of the local economy was outlined by Scottish Enterprise Borders in oral evidence.\(^\text{22}\) It also referred to the possible difficulty of securing ongoing European Structural Funding in 2006 and the challenges that will pose for the area.

70. In Midlothian, similar social and economic problems exist. Again the traditional heavy industries of deep coal mining and paper-making have declined significantly over the past 20 or so years. While some relocation of businesses from Edinburgh has taken place and the area has managed some diversification into other manufacturing areas (such as the growth of the pharmaceutical industry), this has been offset by the low number of new start businesses, and the lack of expansion of established businesses and inward investment.

71. Perhaps due to its closer proximity to Edinburgh and its more buoyant jobs market (although much of the travel-to-work from the area is by car thereby increasing congestion levels around the southern approaches to the city), unemployment in Midlothian is relatively low. But, as with the Borders, a low wage economy and lower GDP exists (its economic growth is the sixth lowest of all Scottish local authorities).

72. Edinburgh, on the other hand, has enjoyed improved economic performance over recent years and is one of the fastest growing economies in the UK, with the commercial and financial sectors being particularly strong. However, it faces difficulties in the future through a projected shortfall in skilled labour, continued higher property values and a shortage of suitable sites for new house building, particularly affordable ones for sale or rent.

73. To maintain and increase this performance, the promoter argues that the provision of improved, efficient, clean transport links into the capital is vital. Indeed, several of the objectives for the railway refer to the needs of Edinburgh. A concern expressed by opponents of the railway has been that the railway is there to serve Edinburgh only and meet its demands and not those of the Borders and

\(^{21}\) Promoter’s memorandum on general principles issues (16 September 2004), vol. 3
\(^{22}\) Official Report, 28 February 2005, cols.77-87
Midlothian. However, continued high economic performance in the capital also brings immediate shared benefits, both socially and economically, for the surrounding regions as well as for Scotland as a whole.

74. The reinstatement of the railway is one of the Scottish Executive’s key transport priorities as well as being a commitment made in its partnership agreement. The Minister for Transport made clear in oral evidence—

“Reopening the rail line will provide greater opportunities for people in the Borders and in Midlothian. It will help to stimulate a sustainable economy in the Borders and to attract investment and, crucially, to encourage more young people to remain in the area. At the same time, it will increase access to the buoyant Edinburgh labour market. Opportunities increase for communities served by the railway. It is good not only for business in the Borders and in Midlothian, but for those businesses in Edinburgh that need better transport links to expand their labour pool. It is also good for Scotland as a whole, as growing our economy is our top priority.”


75. The Committee has noted the promoter’s stated cautious approach to its economic forecasting through patronage, journey times, revenue and overall economic impact. However, given general concerns the Committee has about the business case (referred to elsewhere in the report), it has attached greater weight to the social case for the railway and the need to invest in Scotland’s transport infrastructure, particularly sustainable transport. The Minister for Transport alluded to this in his oral evidence, of making decisions to fund such projects not based purely on projections thrown up through economic modelling.

76. The railway is seen as a mechanism for attracting inward investment to Midlothian and, particularly the Borders and acting as a catalyst for new house building. It could assist in attracting new people as well as retaining the existing population and assist in developing the tourism sector as well as other business and retail sectors, and ending the feeling of remoteness and disconnection that exists in the Borders. The provision of the railway would tie in with the Scottish Executive’s social inclusion objective under its transport spending priorities to 2008 referred to earlier in paragraph 22.

**Housing provision assumptions**

77. The Committee considers that an important aspect of the promoter’s case, and one that goes to the heart of its projections, not just for passenger forecasts but also in achieving the railway’s objectives, is in relation to the housing projection in Midlothian and the Borders. The volume of oral and written evidence considered by the Committee is testament to this.

78. The Lothians structure plan has identified the need for 70,200 houses by 2015. In the longer term, the promoter has forecast that 13,800 new houses will be built in Midlothian and 13,700 in the Borders by 2030. Both the Lothians and Scottish Borders structure plans include housing policies and identify potential areas for housing development aimed at meeting the anticipated population expansion along the A7 corridor needed to deal with the growing population in the Edinburgh city region. For the more immediate future, the promoter stated in
evidence\textsuperscript{24} the intention of Borders and Midlothian local authorities to commit to the development of 10,113 houses by 2011. The Committee heard witnesses on housing at the first oral evidence meeting on 28 February 2005. In his opening statement to the Committee, Allan Lundmark from Homes for Scotland stated—

“This morning the Committee was advised that 10,000 additional new homes could be built during the next 10 years to support the development of the railway. That is the first time I have heard that figure mentioned. Such a number has never been discussed with the housebuilding industry and certainly not with Homes for Scotland, whose member companies build 94% of all the houses built in Scotland each year.”\textsuperscript{25}

79. There had clearly been a breakdown in communication between the promoter and Homes for Scotland again, much to the frustration of the Committee. The Committee does not wish to dwell on this issue, other than to say that the promoter should have ensured that, on such an important issue, all stakeholders were fully aware and involved in the development of the promoter’s intentions and that any misunderstandings were resolved before coming to the Committee. The feeling of the Committee is that, as with other aspects of the promoter’s performance in the promotion of this Bill, it was left to the Committee to facilitate dialogue between affected parties and progress matters constructively to the point now reached. This is not a function of the Committee and should not have been necessary. The Committee is aware that since the meeting on 28 February 2005, the promoter, Homes for Scotland and other key stakeholders have been involved in meaningful dialogue to remove uncertainties and misunderstandings and to progress matters.

80. Turning back to the substance of the housing issue the Committee was concerned about the achievability of the local authorities meeting these targets, especially given the performance of both local authorities over recent years, and whether the necessary infrastructure would be in place to allow the houses to be built. The Committee was also interested in whether there was a market for this level of house building in the areas concerned.

81. The projected level of house building for each area to 2011 and the number built, or ready to be built, since 2003 are—

<table>
<thead>
<tr>
<th></th>
<th>Projection</th>
<th>Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Midlothian</td>
<td>4,793</td>
<td>196</td>
</tr>
<tr>
<td>Borders</td>
<td>5,320</td>
<td>422</td>
</tr>
</tbody>
</table>

82. While the promoter contends that these completion rates are in line with housing plan forecasts, it is of concern to the Committee that rates will need to increase quickly to meet the 2011 target. For example, Homes for Scotland indicated that in Midlothian house building completion rates have not reached higher than 62% of the structure plan requirements in the last ten years. Its experience is that the process is too slow and that the statutory development plan system is failing. It was concerned, as was the Committee, as to whether the

\textsuperscript{24} Promoter’s memorandum on Committee’s questions (16 February 2005), vol. 4
\textsuperscript{25} Official Report, 28 February 2005, col. 97
necessary consents and land release can be obtained for these rates to increase and targets met.

83. The promoter in response has argued that there is flexibility in the local planning process to allow the completion rates to increase. Importantly, there is the strong political will to make this happen. Councillor Adam Montgomery and Councillor David Parker, the respective leaders of Midlothian and Scottish Borders councils’, both stated at the Committee’s meeting on 1 June 2005 their commitment to achieving this level of house building and to doing what is required to make it happen. For example, both are considering whether they are sufficiently resourced to prevent delays.

84. Midlothian Council referred to the option of bringing in external consultants were delays to occur. It was also assessing its internal planning processes to identify problem areas and streamline processes not just in the context of these houses but for its entire operation. It is commendable that both councils are approaching this task through investigation of processes, staffing levels and recruitment, and the use of IT.

85. Both local authorities are now under no illusion as to what is required to achieve these targets. The result of not doing so would likely have severe repercussions for the promoter’s economic benefit projections, patronage forecasts, revenue yield and the overall viability of the railway. While the promoter contends that the impact on its business case of not meeting these targets by 2011, but by 2016, would be minimal (a NPV reduction from £75.3 million to £70.2 million), the Committee is not so relaxed and is clearly of the view that the promoter must do all in its power and seek whatever assistance is required, including through the Scottish Executive (who believes these targets to be achievable), to meet these targets by 2011. (See also paragraph 101).

86. Further detail was given in the promoter’s written evidence. This stated that in Midlothian, the statutory policy framework to deliver new housing is already in place. Both the Shawfair (where 1,500 houses are proposed) and Midlothian local plans have been adopted (these represent 85% of the land release necessary) and planning briefs for all the main housing sites have been prepared.

87. In the Borders, the finalised local plan has reaffirmed the commitment to allocate the necessary land. An interim housing policy has been adopted to ensure the supply of land in advance of the local plan adoption (the local plan will be published in autumn 2005 and adoption is anticipated during 2006). The local plan will include proposals for 1,000 additional houses in the central Borders in addition to the commitment for a major planned expansion of 900 units south of Newtown St Boswells.

88. There is recognition of the obstacles that still exist to meet these targets but the approach of both local authorities appears prudent and sensible. The Committee is more assured now of the promoter’s strong intentions on this matter and of the need to involve key parties such as house builders. The Minister for

26 Promoter’s memorandum on delivery of new housing (26 May 2005), vol. 4
Transport indicated at the Committee’s meeting on 22 June 2005 that he had been “greatly encouraged” over recent months by the progress made and had greater confidence in the capacity of the two local authorities to deliver this volume of house building.27

89. The promoter appears confident that completion rates will certainly increase, with 800 houses per annum being built in Midlothian by 2008 and with rates in the Borders expected to increase once the local plan is adopted (although only 2,250 houses are anticipated for completion here by 2008). All parties must work closely to quickly identify and resolve difficulties and the importance of doing so cannot be overstated.

90. Of equal concern to the Committee was whether the necessary water and drainage infrastructure could be put in place to accommodate this level of house building (this being a difficulty across Scotland, not just for these two areas). Again, on such an important and integral matter to the house building programme, the Committee was left with the impression that dialogue and active and constructive communication could and should have achieved a lot more by the time the Committee came to consider the matter. However, it is now more constructive to consider where things currently stand and what recent progress has been made and can be made in the future. The promoter’s written evidence of 26 May 200528 reported on this and some of this latest evidence is touched on below.

91. Scottish Planning Policy 3: Planning for Housing provides for the use of planning agreements to require house developers to put in place the infrastructure required to service their proposed developments, including the necessary water and drainage services. In Midlothian, the promoter is confident that this is now being addressed, including at some disputed sites on which there were initially identified concerns; for example, on the capacity of existing infrastructure in areas such as Gorebridge and Newtongrange.

92. The promoter has stated that agreements with Scottish Water are now being reached, such as developers funding work through Scottish Water to put in place the required water and drainage services. While it is noted that no moratorium has been imposed by Scottish Water on new housing in the Esk Valley area, there is uncertainty as to how much of the ever reducing water and drainage capacity still exists.

93. In the Borders, Scottish Water has provided up to date information on water and drainage capacity that will assist in the local plan process. Recent evidence has indicated that developers can negotiate ‘innovative’ approaches with Scottish Water to enhance capacity and that local solutions to local difficulties can be achieved through discussion between the developer and Scottish Water.

94. A meeting took place on 20 May 2005 between planning officials from the two local authorities and Scottish Water to discuss this matter. This is certainly

27 Official Report, 22 June 2005, col. 396
28 Promoter’s memorandum on delivery of new housing (26 May 2005), vol. 4
useful but, again, the Committee recommends further, frequent meetings involving all stakeholders to ensure that infrastructure difficulties are quickly resolved and that this is no way acts as an obstacle in the construction of the houses proposed. The Committee calls upon the Scottish Executive to note this situation and to monitor closely.

95. It is encouraging to note that both council leaders in oral evidence referred to the need for discussions with Scottish Water and the house builders and stated that they are confident that difficulties can be resolved through partnership. Of relevance was how the local authorities were in dialogue not only about the current local plans but beyond these on how to achieve future housing projections.

96. Scottish Water indicated that it remained optimistic that water and drainage services would not be a barrier to delivering on this housing. This optimism is based on its investment objectives from 2006-14 that will ensure that funding for development projects will follow in that period. Also, that there are a number of positives about the developments proposed (such as the ability to connect 2,000 homes now at the proposed Shawfair development without any change to the existing infrastructure) and the good relationship it has with both local authorities and house developers.

97. Of concern to the Committee, however, is the reference made by Scottish Water to the development of its business plan for the period 2006-10. While this plan will be developed over the next few months and it is hoped that the various housing developments that are supportive of the railway will be included in it, this cannot be guaranteed at this particular time. As the plan is not likely to be available until early next year, there is a degree of uncertainty on this matter and on what priority will be given to housing in Midlothian and the Borders. The Committee questioned Scottish Water on this matter.

98. Scottish Water responded by indicating that development constraints currently affecting the national planning framework will be given priority and that it will seek to support projects that have firm development commitments. Also, the investment programme for 2006-10 needs to be finalised before the end of March 2006 to allow work to commence in April 2006. However, the Committee believes that this does still not offer the necessary comfort that resources will be given to allow the required infrastructure work, particularly on drainage services, to take place, particularly when the Borders local housing plan has not yet been adopted. It is therefore apparent that no guarantee can be given by Scottish Water at this time on what level of priority will be given, and when, to assist with housing in these areas.

99. A further issue pursued by the Committee with Scottish Water was in respect of its staffing compliment and its ability to cope with the demands that are placed in consideration of development projects such as those in Midlothian and the Borders. Scottish Water did state in response that if additional resources are required, such resources will be put in place to cope with the demand. Its intention was to target its staff in delivering on the strategic planning and development of projects while more locally based expertise on particular projects is bought in (for
example, from house developers). The production of computer modelling to assist in this is ongoing and should speed up the processing of development solutions.

100. The Committee, at its meeting on 22 June 2005, asked the Minister for Transport about the water and drainage position. The Minister indicated that the Scottish Executive was fully satisfied and assured that the required water and drainage infrastructure will be in place to allow for the construction of these houses, ideally by 2011. The Committee also questioned the Minister on whether the Scottish Executive had any plans to make specific allocations to fund the upgrading of water and drainage services in the Borders and Midlothian and to give directions to Scottish Water on prioritising these upgrades. The Minister in response indicated that he would discuss this matter with the relevant ministerial colleagues to see what action the Scottish Executive could take.²⁹

101. The Committee considers that the realisation of the house building programmes of both local authorities are critical to attracting passengers to the railway. The Committee notes the optimism and confidence on the part of both councils and Scottish Water that priority can be given to these proposed developments and that sufficient, timely resources can be made available. However, the Committee believes that more requires to be done and therefore recommends, notwithstanding the conclusions in this report, that precise assurances are given by Scottish Water and the promoter before the Parliament makes a decision on whether the Bill should be passed at the Final Stage. An assurance is sought regarding the provision of the required water and drainage infrastructure to support all the proposed house building. In addition the Scottish Executive is invited to advise on any specific funding or directions or recommendations it intends to make to Scottish Water with respect to the prioritisation of these developments projects in Midlothian and the Borders.

102. In the light of these concerns, the Committee requests the promoter to provide a bi-monthly update on progress on the house building programme. The Committee will report on this progress at the conclusion of the Consideration Stage (should the Bill proceed that far) for the Parliament to reflect on at the Final Stage as part of its consideration of whether the Bill should be passed.

Developer contributions

103. Consideration was given to the possible impact that the levying of a developer contribution of up to £1,500 might have on potential house builders in the areas. The promoter can levy such contributions in the short term under section 75 of the Town and Country Planning (Scotland) Act 1997 although the Bill itself contains provisions that would allow the promoter to levy such contributions for up to 30 years (it is worth noting that the levy will not be collected from affordable housing developments).³⁰ Scottish Borders Council has already been taking £1,500 from new build properties in the Borders albeit in extremely limited numbers.

²⁹ Official Report, 22 June 2005, col. 398
³⁰ Promoter’s memorandum in response to 7 March meeting questions (15 March 2005), vol. 4
104. The reason for collecting such a levy is to allow the promoter, as requested by the then Minister for Transport in 2000, to maximise sources of funding for the railway. The estimated revenues generated through section 75 contributions are £2.9 million from Midlothian and £10.4 million in the Borders, thereby providing £13.3 million towards the estimated £151 million project cost (2005-06 prices).

105. Such a contribution has not been seen as an issue by local developers in the Borders who have indicated that the charge is set at a reasonable level. Indeed, Homes for Scotland said that such a contribution would not have any impact on house prices in the areas and it was unaware of any developer for whom such a contribution has been a disincentive.

106. Continuing with this marketing theme, Homes for Scotland believes that the market does exist to cope with the projected level of house building (or even higher rates). There is continuing commercial interest in the central Borders from both local and national developers, including some that currently do not have any market exposure in the area. The market position in Midlothian is strong (particularly given its closer proximity to Edinburgh) and is likely to remain so.

107. Homes for Scotland did question whether a one hour journey-to-work time for properties in the Borders could hamper the marketing ability to compete with other areas with shorter journey-to-work times (West Lothian, East Lothian and Fife enjoy stronger commuter transport links, through existing rail services, into Edinburgh than Midlothian and the Borders).

108. However, it is recognised that the Borders does have a strong quality of life attraction and this could compensate against such a journey time. It appears not to be a disincentive to prospective house developers.

109. Earlier, mention was made of the economic spin off for the local economy through, for example, the construction of new houses. The promoter, in written evidence\(^{31}\), drew attention to this. For example, in the Borders, much of the proposed new house building could be undertaken by local firms. A lot of the sub-contracting work in kitting out the houses could be undertaken through local skilled labour and suppliers. In Midlothian, there is also the potential to increase employment in the building sector.

110. In employment terms, the promoter believes that the net economic benefit to existing businesses from the construction of new housing in the Borders and Midlothian is between 210 and 360 man years per annum, with derived income of between £3.991 million and £6.699 million.\(^{32}\)

111. The Federation of Master Builders drew attention to these benefits in its written evidence\(^{33}\), benefits such as continuity of work to the building sector that can be achieved over a number of years thereby allowing local businesses to plan and develop and provide secure long-term employment. There is also the benefit

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\(^{31}\) Promoter’s memorandum on housing and patronage (8 June 2005), vol. 4

\(^{32}\) Promoter’s memorandum on general principles issues (16 September 2004), vol. 3

\(^{33}\) Federation of Master Builders, vol. 4
of retaining locally skilled workers who might not then need to move to find employment in more economically buoyant areas such as the central belt.

112. These are particularly positive examples of a direct local economic and social benefit associated with the railway, benefits that are consistent with the promoter’s policy objectives.

113. Associated to this was whether the necessary skills and labour are available to cope with this level of house building. Homes for Scotland and the promoter both believe they are. Homes for Scotland drew attention to the support from developers for such house building commitments given the long term stability it offers. Reference was made to the training of apprentices and the opportunity that such house building offers. While this broad issue is outwith the remit of this Committee, there is a real opportunity here to expand the skills gap through the development of young locally trained and employed workers. The Committee therefore makes particular reference to this issue and calls upon the Scottish Executive and both local authorities to reflect on what local initiatives, with regard to the railway project, can be facilitated.

114. One further issue of interest to the Committee was on the level of social and affordable housing that will be built as a result of the railway. The promoter drew attention to the commitment by Scottish Borders Council that 15% of all new housing in areas of highest demand should be affordable. This could equate to around 534 new houses in the central Borders area. The intention is to increase this percentage. The council is committed to working closely with Communities Scotland, house builders and registered social landlords.

115. In Midlothian, the number of affordable houses is estimated at 750 (15.6%) in the period up to 2011. This includes 300 in the new Shawfair development. Such house building is to be commended and the Committee expects both local authorities to deliver its affordable housing targets to comply with its stated objectives and the general social argument for the railway.

Route options/choice of stations
116. The promoter has developed its scheme over a number of years and, as referred to earlier, it has been assessed against the STAG 1 appraisal, using best industry practice and through discussions with key stakeholders such as the Scottish Executive. Its aim is to deliver a value for money project that maximises the economic and social potential.

117. An alternative view on the route and location of stations was put forward by the Waverley Route Trust. It believed that the promoter’s scheme was based too much on mechanistic modelling and not enough on innovative and practical thinking. The Trust was established in 2002 as a forum for new and alternative ideas for the Borders railway. In 2004 it published a commissioned report (funded mainly by the Rail Passenger Committee Scotland) prepared by CORUS rail consultancy, the purpose being to ‘provide a practical analysis of innovative

34 Promoter’s memorandum on housing and patronage (8 June 2005), vol. 4
35 Delivering an Innovative Borders Railway, CORUS (September 2004)
ideas that will increase the prospects of a railway from Edinburgh to Galashiels and Tweedbank being built and operated in the widest possible interests of the community.’

118. While it is not the function of this Committee to provide a detailed synopsis of the WRT report (but to consider the scheme submitted in the Bill) one issue the Committee did explore was the projected reduced journey time that the WRT felt was achievable. The promoter’s estimated journey time between Tweedbank and Edinburgh is 61 minutes (60 minutes in the opposite direction), whereas the WRT believes that a journey time of 39 minutes is achievable through an hourly express service from Tweedbank to Edinburgh with just three intermediate stops. In addition, the WRT supports a half hourly service operating from Gorebridge only to Edinburgh.

119. The promoter strongly disputed this journey time claim, stating that when the WRT proposals were compared directly with the promoter’s i.e. with trains stopping at each station, complying with best rail industry standards, and factoring in required stop times at stations, then the journey time gap is reduced to only 8-10 minutes. The promoter also referred to its projected journey times being worst case scenario, that could be improved when it comes to the detailed design phase of the railway (through the refinement of track radii, the optimisation of passing loops, possible gradient changes) and in time and practice through the operation of the railway. A further reduction in journey times can be achieved through new and improved rolling stock. Indeed, the promoter anticipates that newer, faster class 170 diesels will be used on the line as opposed to the class 156 and 158 diesels that the promoter originally based its journey times on. This could lead to a three minute saving overall through an increased average journey speed of 37.7 mph.

120. The promoter was also concerned at the overall cost impact of implementing the WRT’s proposals. For example, the promoter contends that significant infrastructure improvements would be required, such as twin tracking at Newcraighall to the Portobello junction, station works at Brunstane junction, and associated overhead electrification works. These works would be outwith the scope of the Bill (the Bill provides for the provision of a railway to Newcraighall and not beyond) and, to implement them, would require additional land take by the promoter thereby leading to the need to notify affected persons (which could lead to subsequent objections to the Bill being lodged) as well as detailed engineering and environmental survey work being carried out. This would likely have a significant cost and time impact. While Network Rail may have scope to use its permitted development powers to allow for such works to be carried out, the works are not part of the promoter’s proposals.

121. In addition, as the Scottish Executive had no plans to fund such work, the cost would fall on the promoter (thereby increasing the overall project cost), and the work was dependent on sufficient spare capacity on the east coast main line. Additional railway paths created would unlikely be allocated to the Waverley railway against higher profile services such as the east coast main line or local aspirations such as improved Dunbar and Edinburgh south suburban services.
122. The promoter also believes that by incorporating such changes, the railway NPV would fall to -£2.7 million, annual patronage would reduce while operating costs would increase.\(^{36}\)

123. The Committee is not, however, discounting the intentions of the WRT and believes that any innovative thinking, that can lead to improvements in the project’s cost and economic viability, must be encouraged. The Committee accepts that while the WRT’s proposals are an untested alternative the Committee is pleased to note the promoter indicating that some proposals could be accommodated as possible enhancements for the future. **The Committee therefore calls upon the promoter to enter into regular dialogue with the WRT and, through this partnership, develop ways to ensure a fast, reliable, efficient passenger railway that maximises passenger uptake and comes in on budget and on time.**

124. A further issue considered was for the railway operating only from Gorebridge to Edinburgh. It has, perhaps, been long recognised that there is a stronger economic case for the railway to operate only to and from Gorebridge. However, this Committee has given great weight to the social argument for the railway operating down to Tweedbank. While a railway as far as Gorebridge only would appear to increase the NPV by around £27 million to over £100 million, an important point was made by the Minister for Transport, a point supported by this Committee. He stated\(^{37}\), when asked about a line only as far as Gorebridge—

> “… that the line would not then be a Borders rail line and that nobody in this area [Borders] would consider it to be a Borders rail line. The decision is to support a Borders railway, to provide a service to people in Midlothian and the Borders.”

125. A railway only to Gorebridge would mean no economic benefit for the Borders. The Committee also asked about a phased opening of the railway, first to Gorebridge and then to Tweedbank at some time in the future. The figures from the promoter\(^{38}\) indicate that with a phased opening to Gorebridge in 2008 as planned and to Tweedbank in, say, 2013, the NPV is reduced to £18.2 million with the wider economic benefit to the Borders also being reduced. Five years worth of patronage would be lost. There would also be an adverse impact on economic and social regeneration in the area as well as the project’s capital costs.

126. While the projected capital costs would reduce from the current £151 million to £60 million (to Gorebridge only), to then phase in Tweedbank in 2013, could mean total capital costs of over £165 million. There would also be associated increases in tendering and procurement costs on top of this (effectively through double tendering and project management). There is also the risk that the second phase might never proceed.

127. The Committee is aware that there are benefits of providing a suburban commuter railway between Gorebridge and Edinburgh. However, that is not what

\(^{36}\) Promoter’s memorandum on Waverley Route Trust supplementary memorandum, vol.3


\(^{38}\) Promoter’s memorandum in response to further clarificatory questions on business case (Gorebridge) (18 March 2005), vol. 6
this Bill provides for, it provides for a railway to Tweedbank in the Borders and it is on such a route that the Committee considered written and oral evidence and now reports. To provide for a railway line between Gorebridge and Edinburgh only would be outwith the general principles of this Private Bill, and not within the scope of this Bill.

128. In addition, the Committee is mindful of the need to invest and improve existing railway routes and, while these are matters for the Scottish Executive to determine within its transport spending priorities, the Committee does question how highly a line to Gorebridge only would feature when compared with other projects. In conclusion, given the adverse social and economic impact on the Borders, the feeling of disconnection that would continue amongst the Borders population, as well as the probable capital cost increases, the Committee does not support the termination of the railway at Gorebridge, even with a phased introduction of the railway from there to Tweedbank at some time in the future.39

129. Turning to the choice of stations, the Committee at the outset sought written evidence from the promoter on this.40 The promoter stated that the proposed station locations broadly follow population centres. The stations considered by the promoter were at Shawfair, Eskbank, Newtongrange, Gorebridge, Stow, Galashiels, Tweedbank and Charlesfield.

130. Following its engineering, economic and environmental evaluation process, Stow and Charlesfield were discounted, principally due to low patronage forecasts and capital costs that would have an impact on the business case. The issue of a station at Charlesfield was not considered by the Committee (it being beyond the scope of the Bill) but the option for a station at Stow was.

Stow station
131. The village of Stow lies approximately seven miles north of Galashiels and has a population of around 600. A station there would provide a third station in the Borders (in addition to Tweedbank and Galashiels). The promoter’s forecasting, which it claims is based on a ‘detailed, econometric stated preference interview survey using industry best techniques’41 was that only 10 passengers a day would use the station, rising to 48 in 30 years time, causing a negative economic impact of £718,000 over this period. It firmly concluded that no business case existed for a station at Stow and that a station there ‘would represent very poor value for money for the public purse’.42

132. This forecast was contested by Stow Station Supporters in written and oral evidence, stating that there was strong local support for a railway station. A community consultation survey commissioned by the Campaign for Borders Rail and carried out by Transport Research and Information Network in March 200243 concluded that there was ‘substantial demand within Stow and the surrounding

39 Christine May MSP dissented: see Minority Report at Annex A.
40 Promoter’s memorandum on general principles issues (16 September 2004), vol. 3
41 Promoter’s memorandum on Stow Station Supporters supplementary evidence, vol. 4
42 Promoter’s memorandum on Stow Station Supporters supplementary evidence, vol. 4
43 Supplementary evidence from Stow Station Supporters
area for a station’. The Stow Station Supporters also referred to the adverse impact the lack of a station would have, with the village being excluded from the social and economic benefits the railway was to bring to the Borders. A station at Stow is also supported by the local community council, the Waverley Route Trust, the Rail Passenger Committee Scotland and the Campaign for Borders Rail.

133. Turning first to the patronage issue, reference was made by several witnesses, and in written evidence\(^4\), to the larger catchment areas available outwith the village itself such as the area north of Galashiels from where people might not wish to drive south to catch a train north to Edinburgh. Residents in areas such as Clovenfords may find it more convenient to travel a few miles north to Stow. Residents in Fountainhall may choose to make the short journey south to Stow. A large catchment area was also available in the town of Lauder, some six miles east of Stow where residents could travel to and from Stow through local bus feeder services. The community survey referred to above estimates some 100 daily return journeys from Stow. There is clearly a divergence of passenger number projections.

134. Reference was made to the house building taking place in Stow with 50 houses expected to be built by 2011 and to larger housing developments being built in Lauder. There is therefore potential to increase patronage through this increase in housing (and thereby population).

135. While this increase in house building in the village would lead to an increase in population, it is not certain that everyone in Stow would welcome a station. There is a feeling that with a station will come pressure from developers to expand house building in the area thereby changing the character of the village. Reference was made to the topographic problems surrounding the village with hills and a flood plain limiting scope for large scale development. While the Committee is mindful of the desire of local residents to retain the charm and character of the village, it has to be accepted by residents that the provision of a railway station could lead to an increase in the village’s population through new housing. The likelihood is that a certain amount of development will take place in the village regardless of whether or not a station or indeed the railway is built.

136. A station did exist in Stow pre-Beeching. However, the former station site is now occupied by a new school. Any new station would be located to the south of the former site (although this would create vehicular access and associated health and safety difficulties that would require to be addressed). A new car park would also be required.

137. The promoter has estimated that construction costs for a two-platform station would be around £1 million. These costs would increase were a decision taken later, once the railway was operational and there then came about an increased demand from passengers for a Stow station. A new footbridge for those with impaired mobility would be required to provide access to the two platforms, these platforms would have to be long enough to cater for six carriage length

\(^4\) Supplementary evidence from Stow Station Supporters
trains (to allow for anticipated growth on the line). A twelve car parking area would need to be provided as well as a new vehicle access road to the station.

138. While these capital costs must be carefully factored in given the desire of the Committee to see project costs strictly maintained and adhered to, the Committee is mindful of the higher capital costs that arise were a decision made in the future to site a station at Stow on what would then be a live railway.

139. A further issue that figured in the Committee’s consideration was the health and safety risks to local residents through an increase in road freight traffic on the A7 caused by the anticipated economic and business upturn in the area. This was a concern expressed by the Parish of Stow Community Council when it drew attention to the fact that 90% of the schoolchildren must cross the A7 (which goes through the village) to get to the school.

140. The Committee has carefully considered this issue and is satisfied that there is a social case for a station at Stow. It is difficult to understand how the project can be called the Borders railway yet, while the bulk of the track will be there, there would be only two stations serving the local population (a population that is anticipated to grow). The Committee also recognises the feeling that the village would not, on present proposals, necessarily benefit from the purported economic or social benefits of the railway. The promoter believes that it has taken a generally cautious approach to patronage forecasting yet this is in contrast to the level of support that appears to exist amongst the local population for a station and indications of usage. The Committee is inclined to accept that passenger numbers would be higher than the 10 per day forecast by the promoter (but not as high as 100 per day).

141. Neither the Committee, nor the Parliament, has the power at the Preliminary Stage to make amendments to the Bill. The Committee is therefore indicating to the promoter that, at this time, it supports in principle the provision of a railway station at Stow. The Committee also invites Scottish Borders Council, along with the local community council and local groups (such as Stow Station Supporters, the Waverley Route Trust and Campaign for Borders Rail) and residents, to enter into early dialogue on how best the issues surrounding the provision of a station, such as land take, car parking, station location, design and construction, can be taken forward in an agreed manner.

Railway integration with other modes of transport

142. In areas not served by passenger rail services and where the principal mode of public transport is the bus, the Committee wanted to consider how the railway would integrate with existing and planned bus services to maximise opportunity, passenger access, and revenue yield and assist in meeting the objectives of the scheme. Of particular interest was how the railway would be of benefit to those outlying rural communities, particularly in the Borders, that rely on the bus (around 70% of people in the Borders are within six minutes of a bus stop).
143. The Committee was also interested in how the railway would integrate with car users and be a more attractive proposition to existing car users when travelling from the Borders to Edinburgh and vice versa. An aim of the railway is to get people out of cars and on to the train (the promoter believes that over 770,000 car trips can be annually removed from the roads). The view of SESTRAN was that if the railway did not proceed then people moving to the area into new housing will simply use their cars.

144. The promoter believes there are “visionary” opportunities for the railway to integrate with other modes of transport. Its approach has been to plan for the development of the proposed stations as integrated transport hubs aimed at maximising the opportunity for integration between the railway and buses, cars, pedestrians and cyclists. To further increase this level of access, all new housing in Midlothian is to be within 800m of a station and in the Borders, 90% of new housing is within a 10 mile radius of the stations, most within 1½ miles. The promoter hopes that the ease and cost of using integrated ticketing such as Plusbus and the South East Scotland One-Ticket will encourage the use of railway feeder buses.

145. For example, the proposed station at Tweedbank, where an estimated 67% of passengers will arrive at the station by car, will have parking (possibly free) for 270 cars and 10 disabled spaces. Road access to the station will be remodelled to ensure direct access to the car park. The station would be sited close to the A6091 which links the A7 and A68 which lead to Selkirk, Earlston, Hawick, Melrose, Jedburgh and Kelso as well as Galashiels; these areas are all served through existing local bus services. Scottish Borders Council has estimated three bus services providing 55 trips per week day will pass the station. In addition, existing and new footpaths will be utilised to increase convenient access to the station from the nearby residential area (over 15,000 people stay within 2km of the station) for both foot passengers and cyclists who will benefit from the provision of secure cycle parking at the station. A taxi rank would also be created. This is an encouraging example of how the promoter has sought to maximise passenger opportunity at a station.

146. Earlier in the report, the issue of tourism was considered and how the railway could improve opportunity for tourists to visit the Borders. A point was made in oral evidence that visitors wishing to travel to/visit for example Kelso or Melrose would not be able to go directly by train. The Committee calls on both local authorities, the local bus operators and other interested parties to ensure there will be careful integration between trains and buses to maximise opportunities and minimise inconvenience to visitors and to tie in with the integration objective set out in the Scottish Executive’s spending priorities to 2008. Given that First Group, the current holder of the Scottish passenger rail franchise is also the principal bus operator in the area, it is uniquely placed to ensure effective and thoughtful rail and bus integration.

147. In the experience of SESTRAN, rail and bus services generally compliment each other with buses providing feeder services to stations. It also referred to the fact that, with more than half the people who will use the railway either walking or cycling to the stations, this would indicate—
“that the stations are located in logical places so that people can travel to them sustainably.”

148. It is helpful that the promoter has been in dialogue with both First Group and Lothian Buses to take such issues forward and the Committee asks that such discussions must bear in mind the need for a careful sensitive approach in co-ordinating rail/bus timetables that is convenient and beneficial to travellers. The Committee notes that integration, when assessed as part of the Scottish Executive’s STAG 1 process, was appraised as a ‘major benefit’.

**Viability of Borders-Edinburgh bus service**

149. A further issue of concern to the Committee, particularly as regards those people who stay in areas that will not be served by the railway (for example, Stow and Fountainhall in the Borders) was the future of local bus services. In particular, the impact the railway would have on the 95/X95 services that operates between Galashiels and Edinburgh along the A7.

150. One of the Scottish Executive’s clear objectives in the STAG 1 process is that projects, such as the Borders railway, must be assessed from an environmental perspective. The Committee notes that the railway was assessed as being of negative environmental impact, despite an aim of the promoter is to get passengers out of cars and not off buses thereby creating a more sustainable transport system. It is important that the promoter approaches this aim carefully to ensure that, with the projected volume of housebuilding in the areas and resulting increase in commuting population, the marketing and promotion of the railway and buses are advocated as viable alternatives to the car. This goes back to the earlier point about how railway and bus services must compliment each other.

151. The Committee was concerned to note the projected 950,000 transfer of bus passengers to the railway in the first year of operation (a 50% transfer) resulting in an estimated £950,000 revenue loss. Specifically on the X95 service, there is an estimated loss of 93,000 passengers.

152. The promoter in response believes that new station feeder services will mitigate this loss by £250,000. In addition, new bus passengers from the new housing and from areas such as Selkirk and Hawick could generate £650,000. This revenue could increase as housing increases beyond the 2011 projections (27,500 houses are estimated for completion by 2030 in Midlothian and the Borders). The promoter also believes that the concessionary fares scheme could assist in increasing bus passenger numbers in the railway corridor.

153. However, of particular significance, was the recent announcement by the Scottish Executive of an £1.2 million allocation from the Bus Route Development Fund to Scottish Borders Council specifically for the development of key bus services in the Borders, including the introduction of new accessible buses and an increase in frequency from hourly to half hourly on the 95/X95 route. This service

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45 Official Report, 7 March, col. 127
46 Promoter’s memorandum on general principles issues (16 September 2004), vol. 3
in particular is one that Scottish Borders Council is committed to maintaining and developing and is a service it believes will compliment the railway. It is confident that there will be no requirement for increased subsidy on this enhanced service following the introduction of the railway.

154. The Committee notes the opportunities that the promoter and bus operators believe the railway will provide for the integration and development of both new and existing bus services. Such opportunities are to be supported and the Committee is encouraged that discussions are taking place to maximise these opportunities some three or four years in advance of when trains might be operating. While First Group, the main bus operator in the Borders, has indicated that further work will be required to assess the commercial impact of the railway the promoter believes that there is a potential for bus patronage to increase as demand for the railway grows and bus services improve as a result.

Patronage forecasts and revenue yield assumptions
155. A concern of the Committee was in relation to the promoter’s passenger number forecasting and, stemming from this, the anticipated revenue yield through passenger fares. The Committee has given these forecasts close scrutiny. The view of the promoter is that its approach to the business case projections has been one of caution with forecasts that are based on the worst case scenario.

156. The Strategic Rail Authority indicated that the promoter appeared to have taken a cautious approach in its forecasting and that its growth figures appeared credible. The estimated revenue yield in 2008 (the anticipated first year of the railway’s operation) is £3.608 million.

157. However, the view of the Minister for Transport when asked at the Committee’s meeting on 22 June 2005 whether he agreed that the promoter had taken such a cautious approach, was—

“I would describe those figures as appropriate and agreed, not cautious”47

158. In its demand modelling for the project, the promoter states that it has followed clear principles that are intended to produce robust, reliable and realistic forecasts for patronage on the railway. It has used industry standard forecasting methods and modelling that are acceptable to the Scottish Executive. Wherever possible the modelling uses bespoke market research and survey data. The demand growth modelling is based on clear and robust drivers such as anticipated GDP growth and population increase through the expansion in housing. It believes it has erred on the side of caution and that its assumptions are conservative, with generated passenger rates towards the bottom of the scale when compared with other projects. The promoter does however accept that, as there have not been many new railways opened in recent years, it is difficult to find useful comparisons.

159. It is noted from the Minister for Transport’s evidence to the Committee on 14 March 2005 that the Scottish Executive will require to satisfy itself as to

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47 Official Report, 22 June 2005, col. 403
whether further benchmarking is required, using appropriate comparators, to quantify the promoter’s patronage forecasts.

160. The Committee was particularly interested in the role of the new housing in generating passenger demand and the estimated patronage growth (which is made up of the impact of the new housing and an annual GDP growth of 2.5% pa) of just over 5.5% per annum over a 30-year period (the Borders and Midlothian form the largest source of commuting into Edinburgh). Passenger numbers on the ScotRail network over the past year have grown by 11%. Similarly, the Bathgate-Edinburgh line has grown at an average annual rate of 6%. It is estimated that the new housing could increase the population catchment in the railway corridor by 20,000, creating almost half of the passenger growth in the first five years of the railway’s operation.

161. It is estimated that there will be 185,000 leisure trips, including tourist trips, in 2008. This figure could grow to 405,000 in 2015 and 645,000 in 2020. This represents 14% of all trips. The promoter has forecast that around 75% of passengers in peak travel periods will come from commuters with around 55% of passengers in off peak travel periods being shoppers. The table below sets out the assumed trip rates—

162. The following tables sets out the fare assumptions—

163. The promoter believes that, through increased patronage, the railway will achieve an operating profit within six years of opening (its projection is for 2013). That means that the annual revenue from fares will exceed the annual operating cost, excluding capital depreciation (the fact that the railway will be new means
that maintenance and operating costs will be lower and be deferred for a longer period of time).

164. The promoter also believes that the railway can operate without subsidy from the Scottish Executive that subsidises the Scottish passenger rail franchise, again within six years.

165. This ability to operate subsidy free was disputed by the Strategic Rail Authority and the Committee is similarly sceptical, even factoring in the Scottish Executive’s commitment to write off the railway’s capital costs. While it will always be the intention to run a railway profitably, they are, by their very nature, expensive to operate. The SRA referred to this in its oral evidence\(^\text{48}\)—

> “the revenue side is evidenced by the reluctance on behalf of all parts of the industry and policy makers to reflect the true cost in the price of using the railways. Often that is done for the very good reason that the railway needs to compete with other modes of transport. The railway is often a price taker rather than a price setter”.

166. \textbf{The Committee calls upon both the promoter and the Scottish Executive (given its responsibility for funding such subsidies) to carefully reconsider the underlying assumptions and forecasts that the railway can operate subsidy free within six years and the impact on the future operating costs and profits of the railway should the railway still require subsidy. The promoter and the Scottish Executive are hereby invited to update the Committee before the conclusion of the Consideration Stage on whether they still support these assumptions. It will then be for the Parliament to reflect on this at the Final Stage on whether the Bill should be passed.}

167. The promoter believes that the bus concessionary fares scheme would have a neutral impact on rail revenue. This is due to the volume of passengers that may transfer from bus to rail (50%) that are price insensitive (that is, they choose rail as their mode of travel regardless of the price differential e.g. workers commuting into Edinburgh) and those price sensitive passengers that choose to stay with the bus due to its lower fare (e.g. young people and the elderly). The promoter has not factored into its patronage forecasts cheap rail fare concessions, preferring instead to take a more conservative approach.

168. The promoter believes that the introduction of discounted fares such as savers and loyalty discounts for season ticket holders will improve the overall financial case. Such fares are normally considered at the operational stage as a means of maximising revenue by attracting new additional passengers and meeting social inclusion targets, for example, by attracting lower income passengers. It believes that such discounted fares will increase demand and therefore revenue. The Committee’s advisers are less confident on this, believing that discounted fares will overall reduce revenue.

169. The promoter believes that the proposed standard single fare of £6.50 is comparable with other lines on other medium distance flows to Edinburgh (for example Stirling, Dunblane, Livingston, Glenrothes) and other existing routes.

\(^{48}\)Official Report, 14 March 2005, col. 211
Ultimately, the level of fares will be a matter for the train operating company and the Scottish Executive. And while the promoter has sought to reflect the need to maximise income and economic return, the Committee notes that the revenue generated by certain passenger groups, such as commuters, appears optimistic compared with other First ScotRail flows. The promoter referred to market research and discussions with First ScotRail that have informed the level of the proposed fare.

Project cost overrun

170. The promoter indicated an optimism bias (this is the allowance made to represent the risk and uncertainty in the estimation of capital costs and benefits) of only 4% which the Committee considered to be very low and close to the minimum value used for standard civil engineering projects. Indeed, an optimism bias of 40% would normally be assumed sufficient (as recommended by HM Treasury\textsuperscript{49}). This concern over such a low bias was also expressed by the Strategic Rail Authority who thought it should be 40%. Necessary reassurances were sought from the promoter on its projections for the £151 million (2005-06 prices) capital costs of the railway.

171. The promoter contends that the low level of optimism bias reflects the state of development of the project and the result of initial detailed survey work that has been conducted, for example, on existing structures such as viaducts, tunnels and the track bed that is still largely intact. In other words, a high level of optimism bias may be set at the outset of the project (the 2000 feasibility study referred to an optimism bias approaching 44%) but then, as proposals are firmed up and made more precise and technical surveys carried out, that bias goes down.

172. In addition, the railway would not be constructed within a live railway environment, will involve the installation of relatively simple infrastructure along an existing right of way (while there would need to be a level of compulsory land acquisition, the promoter has indicated that it has taken a pessimistic approach to land and property costs in determining the amount required for compensation) and with straightforward signalling, the promoter believes that such a lower end figure is appropriate. It has discussed this with the Scottish Executive and the Department for Transport.

173. Supplemental to this, in oral evidence to the Committee,\textsuperscript{50} the Minister for Transport referred to one of the conditions attached to the Scottish Executive’s decision to provide £115 million of the project cost that a clear and comprehensive risk management strategy is developed and put in place by the promoter before any construction takes place.

174. As referred to above, the Scottish Executive is providing the bulk of the funding for the railway project – £115 million which is about 85% of the £134.22 million project cost (2002 prices). The Scottish Executive has indicated that its share of the project costs will be uprated in line with inflation to reflect the cost at the time of tenders (£115 million becomes £123.7 million at 2005-06 prices). The

\textsuperscript{49} Green Book, Appraisal and Evaluation in Central Government, HM Treasury

\textsuperscript{50} Official Report, 14 March 2005, col. 234
Scottish Executive is not making any commitment on additional funding should project costs increase.

175. The increase in project costs was an issue raised by several objectors to the Bill who were, justifiably, concerned that any increase in the cost of the project would require to be met by council tax payers through increased council tax payments or by reductions in other council service budgets (for example education). The promoter could obviously not give a categorical assurance that, were the project’s capital or operating costs to increase, council tax levels would not increase. However, it did refer to the risk analysis that it has carried out, the purpose of which is to identify and quantify any potential risks with the aim of bringing the project in on target.

176. The Minister for Transport, in making his funding announcement, set out four criteria attached to the £115 million:

- that funding was conditional on this Committee recommending the general principles of the Bill be passed and the Parliament agreeing to that;
- the assumptions that underpin the business case (patronage forecasts, housing growth assumptions, project cost containment, risk management) must hold;
- a clear, comprehensive risk management strategy must be developed and delivered;
- the railway must integrate with local bus services to maximise impact in the Borders and Midlothian.

177. The development and delivery of a clear and comprehensive risk management strategy is clearly a matter for the promoter and the Scottish Executive to prepare, agree, implement and monitor.

178. The promoter has strongly indicated that in developing its proposals for the railway it has included substantial risk allowances into its costings that use methodologies that reflect best industry practice as well as that recommended for such projects by HM Treasury. In addition, the promoter and the Scottish Executive will be using the Office of Government Commerce gateway process\(^{51}\) whereby the scheme will be evaluated at certain key points by the Scottish Executive and can be subject to independent evaluation.

179. The promoter and the Scottish Executive have indicated that the necessary risk strategy will be developed during this year to allow the tendering process to proceed quickly (should the Bill proceed). The promoter did indicate that before issuing any tendering document it will be required to convince the Scottish Executive that the necessary funding is in place, that the correct procurement route has been chosen, and that a full risk assessment is in place to identify risks and how these should be managed and by whom.

\(^{51}\) Waverley Project SE Gateway Review, May 2004 (see Annex 10 of Reconnecting to Secure Our Future)
180. The promoter believes that the delays to the Bill’s progress through the Parliament have not had a pronounced impact on the estimated project costs or the proposed timetable for awarding tenders and construction. As recently as the Committee’s meeting on 1 June 2005 the leader of Scottish Borders Council, in response to a question regarding speculative reports that the project costs had increased, stated—

“After the mischievous press articles in question appeared, my officials met Scottish Executive officials to check the previously agreed costings and to examine the methodology and other issues. As I understand it, the Scottish Executive and our officials are absolutely at one in being satisfied with the costs as they stand”.

181. The Committee notes the requirements stipulated by the Scottish Executive with respect to its award of funding, as set out by the Minister for Transport at the Committee’s meeting on 14 March 2005. It is for the promoter to ensure that, should the project proceed, costs are strictly adhered to and for the Scottish Executive, to satisfy itself as principal funder, that the promoter is managing the project in the most efficient and cost effective way. The Committee urges both parties to police the risk management strategy to ensure that, should the project proceed, it is delivered on time and budget. Should project costs increase in any way, it is clear the Scottish Executive places responsibility on the promoter to justify such increases and that the Scottish Executive will consider their impact and whether they should be funded (and how). The Committee takes no further view on any of these issues, accepting they are post-Bill permission matters between the promoter and the Scottish Executive.

182. A further issue the Committee sought assurances on was the certainty and provision of funding from sources other than the Scottish Executive. The promoter provided a summary of the funding sources in written evidence. The promoter clearly stated in oral evidence that all the identified funding sources are still in place. In addition, the promoter was continuing to identify alternative or additional sources of funding.

<table>
<thead>
<tr>
<th>Cost Element</th>
<th>2002 Prices</th>
<th>2005 Prices</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Cost</td>
<td>£134.22m</td>
<td>£151.7m</td>
<td>Application of inflation/indices</td>
</tr>
<tr>
<td>Proposed Funding</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scottish Executive</td>
<td>£110.6m</td>
<td>£128.9m</td>
<td>Award of £115 million (2002 prices) increased to reflect 2005 prices as per Minister’s announcement</td>
</tr>
<tr>
<td>Scottish Borders Enterprise</td>
<td>£1m</td>
<td>£1m</td>
<td>Unchanged</td>
</tr>
<tr>
<td>Shawfair Developments Contribution</td>
<td>£4.8m</td>
<td>£4.8m</td>
<td>Unchanged</td>
</tr>
<tr>
<td>Offset against Landfill Tax</td>
<td>£1.65m</td>
<td>£1.86m</td>
<td>Increased to reflect inflation to 2005 prices.</td>
</tr>
<tr>
<td>Cost Element</td>
<td>2002 Prices</td>
<td>2005 Prices</td>
<td>Remarks</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>-------------</td>
<td>-------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>SRA funding</td>
<td>£4m</td>
<td>Nil</td>
<td>Replaced by increased Scottish Executive funding from £110 million to £115 million</td>
</tr>
<tr>
<td>Currie Road Development Galashiels</td>
<td>£1.8m</td>
<td>£1.8m</td>
<td>Unchanged</td>
</tr>
<tr>
<td>S75 Scottish Borders Council</td>
<td>£7.5m</td>
<td>£10.4m</td>
<td>Council contribution increased as per agreement with Scottish Executive in line with increased costs. SBC commitment includes increased contribution</td>
</tr>
<tr>
<td>S75 Midlothian Council</td>
<td>£1.8m</td>
<td>£2.9m</td>
<td>Council contribution increased as per agreement with Scottish Executive in line with increased costs. MC commitment includes increased contribution</td>
</tr>
<tr>
<td>Total Funding</td>
<td>£133.15m</td>
<td>£151.7m</td>
<td></td>
</tr>
</tbody>
</table>

183. The promoter has indicated that, should project costs increase, additional funding options are available, for example; City of Edinburgh Council will consider a capital contribution and additional funding is being sought from European funding contributions and the City’s Growth Fund.

184. For example, the section 75 contributions referred to earlier could allow the promoter to take £1,500 from each of the 7,500 houses to be built in the Borders up to 2038. That could run to £11.25 million as opposed to the £10.4 million earmarked. Additional funding via the EU was also an option that might be open to the promoter.

**ECHR**

185. Given the requirement for the Parliament to legislate in a manner compliant with the European Convention on Human Rights (“ECHR”) (section 29(2)(d) of the Scotland Act 1998) and its obligations under the Human Rights Act 1998, the Committee must consider the human rights implications of the Bill. This is the case notwithstanding that the Presiding Officer has already issued a statement that, in his view, the provisions of the Bill are within the legislative competence of the Parliament. This is because the Committee at both Preliminary and Consideration Stages has a wider role in ensuring that the Parliament legislates in an ECHR compatible manner.

186. Some objectors raised specific ECHR based objections, in particular, referring to the rights protected by Article 1, Protocol 1 and Article 8 of the ECHR. The detail of these objections would be considered by the Committee at Consideration Stage.

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52 Official Report, 14 March 2005, col. 259
187. However, for the purposes of its Preliminary Stage consideration the Committee notes that the rights under these articles are qualified. In certain circumstances, an interference with the right protected will be justified if certain criteria are met. Broadly, these criteria are that the interference is lawful and in pursuance of a legitimate aim (such as the general interest or the economic well being of the country) and proportionate (i.e. that a fair balance is struck between the rights of individuals and the rights of the wider community) and that the interference authorised by the Bill is no more than is necessary to pursue the aim in question. Even if the Committee were persuaded in a particular case that a person’s right might be interfered with, the Committee would then require to consider whether the interference was justified. As already stated, detailed analysis of how the ECHR rights of individuals might be affected by the Bill is a matter for Consideration Stage.

188. At Preliminary Stage, the Committee is considering the general principles of the Bill. In approving those general principles the Committee is indicating that it is satisfied with the aims of the Bill. For ECHR purposes, the Committee also needs to be satisfied that the promoter has taken account of the requirements of ECHR law in drafting the Bill and that, on the face of it, a fair balance has been struck between the competing interests of those adversely affected by the scheme and the benefits to the wider community.

189. The paragraphs below briefly analyse the promoter’s evidence on how it has and will seek to comply with ECHR.

Article 1 Protocol 1
190. This Article protects peaceful enjoyment of possessions. The promoter appears to have taken account of the requirements of this Article in drafting the Bill and its analysis of this area of law seems to be broadly sound. In particular, the promoter states that it carried out a detailed assessment to ensure that only those properties that were absolutely necessary to the building of the railway will be affected, either by way of compulsory acquisition or temporary possession. The promoter accepts (correctly) that acts of compulsory acquisition or temporary possession, both authorised by the Bill, are, in principle, sufficient to constitute an interference with rights under this Article.

191. The promoter gave a fairly extensive account of this assessment. It concluded that it is satisfied that overall interference with land was kept to the minimum necessary in the Bill provisions. This is an important point in establishing proportionality, particularly in light of the fact that some objectors have argued that the interference with their property is more than is absolutely necessary.

192. The promoter appears to have carefully considered how to limit the proposed interference with private land. The promoter states that when the Bill comes to be implemented, land will only be taken if it is required by the authorised undertaker for the purposes of the authorised works. So it is possible that the eventual land take will be less than is currently envisaged. This does provide a measure of assurance that an appropriate balance has been achieved between the general interest and those specifically affected.
193. Another factor in ensuring proportionality is proper consideration of alternative routes. The Promoter's Memorandum outlines the approach adopted by the promoter in considering and rejecting alternative alignments for the railway. This included commissioning a route option study. It concludes that the "prime reason" for choosing the alignment proposed under the Bill was "environmental"\(^53\), though it argues that it also has operational and financial benefits.

194. The other important aspect of Article 1 Protocol 1 is consideration of compensation. The law in relation to Article 1 Protocol 1 is settled in this respect. Where property is being taken compulsorily then compensation will almost always be required, otherwise a breach of the rights under this Article will have occurred. The promoter indicates that "the Bill implements existing legislation on compensation on the same basis as any other compulsory purchase in Scotland"\(^54\).

195. Another point of interest is that the Bill makes provision for compensation where property, though not compulsorily acquired, is nevertheless damaged during temporary possession for the purposes of constructing works. Finally, provision is made in section 39 of the Bill for "blight" – that is where a proprietor cannot, or finds it difficult, to sell his or her property at market price because it is subject to a compulsory purchase order.

196. The Committee is satisfied that the promoter has adequately explained how it sought to ensure compliance with Article 1 Protocol 1. Of particular importance are the compensation measures in the Bill. In addition, a proportionate approach is indicated by the evidence of how the promoter sought to minimise land take and the fact that it formally considered alternative options for the route. However, it may be necessary for the Committee to revisit some of these issues in the context of individual objections at Consideration Stage.

Article 8

197. This Article protects the right to respect for private and home life, which may include instances of a person’s quality of life being adversely affected by environmental impacts such as noise and air pollution. The promoter contends that if Article 8 is engaged, the interference with rights will be justifiable under Article 8(2) on the basis that it is lawful, necessary, in the interests of the economic well-being of the country, and proportionate.\(^55\)

198. The Committee is satisfied that the promoter’s approach to Article 8 and its analysis of the law is sound. It does, of course, remain to be seen whether Article 8 is engaged in the context of individual objections. The Committee may require to hear further detailed evidence and form a view on this at Consideration Stage but, for the purposes of Preliminary Stage scrutiny, the Committee is satisfied that the promoter has taken due account of the requirements of Article 8 in drafting the Bill.

\(^{53}\) Promoter's Memorandum, paragraph 30
\(^{54}\) Promoter's memorandum on objectors comments, vol. 5
\(^{55}\) Promoter’s memorandum on objector comments, paragraphs 91 and 92, and Promoter’s Memorandum on further questions on ECHR, paragraphs 3 to 5
199. Overall, at this stage the Committee is content with the assurances that it has received from the promoter that it took account of the requirements of ECHR in drafting the Bill and devising the scheme.

SHOULD THE BILL PROCEED AS A PRIVATE BILL

200. The second function of the Committee at Preliminary Stage is to report on whether the Bill should proceed as a Private Bill, that is to say—

- is the purpose of the Bill to obtain for the promoter particular powers or benefits in excess of or in conflict with the general law?
- do the accompanying documents to the Bill satisfy the technical criteria that are set down in the Standing Orders and are they adequate to allow proper scrutiny of the Bill?

Scope of the Bill

201. This section of the report deals with the first point. The Committee must satisfy itself that the Bill and the identity of the promoter both conform to the definition of a Private Bill set out in Rule 9A.1.1 of Standing Orders—

‘A Private Bill is a Bill introduced for the purpose of obtaining for an individual person, body corporate or unincorporated association of persons (“the promoter”) particular powers or benefits in excess of or in conflict with the general law, and includes a Bill relating to the estate, property, status or style, or otherwise relating to the personal affairs, of the promoter.’

202. In its approach to the consideration of this issue, the Committee sought written evidence from the promoter in response to a number of specific questions. The promoter’s responses were, on the whole, detailed and comprehensive. Paragraphs 4 to 9 of the Promoter’s Memorandum are also helpful because they briefly address the legal need for a Private Bill. In addition, paragraphs 5 to 9 of the Explanatory Notes contain useful information on the powers that the Bill will confer.

203. Having regard to this evidence and the terms of the Bill the main points noted by the Committee are summarised below.

204. As regards the identity of the promoter, the promoter is a local authority established under section 1 of the Local Government (Scotland) Act 1994. By virtue of section 2(3) of that Act it is a body corporate. In relation to the legal need for the Bill and whether it confers on the promoter particular powers or benefits in excess of or in conflict with the general law, the Committee notes that the Bill confers on the authorised undertaker:

- statutory authority to construct the works required for the scheme. The authorised undertaker means Scottish Borders Council or any other party to whom it transfers the functions of the authorised undertaker (see section 30

56 Promoter’s memoranda on whether the Bill should proceed as a Private Bill and on further questions on scope of the Bill, vol. 5
of the Bill). At present, Scottish Borders Council has no powers in its capacity as a local authority to construct the works;

- powers to compulsorily acquire land or rights in land permanently or temporarily for the purposes of the scheme. These powers are not replicated anywhere else. Such powers as the Council does have in its capacity as a local authority to compulsorily acquire land are not exercisable for the purposes of constructing a railway line;
- a number of other powers in connection with the authorised works: power to enter land for survey work, to fell trees interfering with construction, to construct miscellaneous works, to stop up certain roads etc. In the absence of the Bill the authorised undertaker would not exist and the promoter would not have these powers.

205. In looking at the scope of the Bill, the Committee also noted the following consequences of the passing of this Bill (should the Parliament pass the Bill):

- by being granted statutory authority by the Parliament, the authorised undertaker will be able to construct the scheme without being liable for creating a legal nuisance.
- a further consequence of the authorisation proceeding by means of a Private Bill is that in general terms development authorised by the Bill will benefit from deemed planning permission by virtue of the Town and Country Planning (General Permitted Development) Order 1992 (Article 3 and Class 29 in Part 11 of Schedule 1). The promoter will not therefore need to apply separately for planning permission.

206. In summary, the promoter’s evidence is that the Bill seeks to authorise a package of statutory provisions exercisable by “the authorised undertaker” which are necessary in connection with the construction of the railway. Although the power to acquire land, construct the works etc will vest in the authorised undertaker which will initially be Scottish Borders Council (“the Council”) it can (by virtue of section 30 of the Bill) be one or more transferees. These powers, exercisable by the Council as the authorised undertaker in the first instance, are quite separate from the Council’s ordinary local authority functions. The authorised undertaker will be a creature of statute created by the Bill. As such the authorised undertaker does not yet exist or have any powers.

207. It is clear from the above that the Bill is a private Bill within the meaning of Rule 9A.1.1 of the Standing Orders. It is also clear that the promoter is a body corporate with competence to introduce a Private Bill.

208. **Having considered the promoter’s written responses, and the terms of the Bill, the Committee is satisfied that the requirements of Rule 9A1.1 of the Standing Orders have been met.**

### Adequacy of accompanying documents

209. Turning now to the second of the Committee’s functions under this heading, the adequacy of the accompanying documents. The Committee’s role here is to satisfy itself that the accompanying documents conform to Rule 9A.2.3 of Standing Orders and are adequate to allow for proper scrutiny of the Bill.
210. The accompanying documents lodged with this Bill are as follows—

i. Promoter’s Statement*: this details all the arrangements made by the promoter with regard to the notification, discussion or consultation, advertising and distribution of the Bill and accompanying documents.

ii. Promoter’s Memorandum*: this explains the policy objectives of the Bill, whether alternative ways of achieving the objectives were considered, what these alternatives were and why the approach chosen was adopted; what consultation was undertaken on the objectives and the ways of meeting them and of the detail contained in the Bill together with a summary of the outcome of the consultation.

iii. Maps, plans and sections: these are produced in a specified scale and show key information about the route of the line, where the construction will take place, any land to be compulsorily acquired, along with other details.

iv. Book of Reference: this is the list of the names and addresses of the owners, lessees and occupiers of all lands and buildings which may be compulsorily acquired, or used, or who have interests in any land, or water, in, or over, which rights would be extinguished.

v. Environmental Statement*: this contains all the information required under schedule 4 to the Environmental Impact Assessment (Scotland) Regulations 1999.

vi. Estimate of Expense and Funding Statement*: this sets out the estimated total cost of the project, giving a detailed breakdown of each element of it and the sources of funding. It also shows the estimated timescale over which these costs will arise and an indication of the margin of uncertainty of the costs.

vii. Explanatory Notes*: these summarise objectively what each provision of the Bill does and provide information necessary or expedient to explain the purpose of the Bill.

viii. Assignation of Copyright/Licensing Agreement: this assigns to the SPCB copyright in the Bill and those accompanying documents published by the Parliament.

* These documents can be inspected at the libraries in Galashiels, Peebles and Dalkeith and via the Committee homepage on the Parliament’s website- www.scottish.parliament.uk/business/committees/waverlyRB/index.htm.

211. The approach of the Committee to scrutinising the accompanying documents was to invite the promoter to submit written evidence in response to some initial detailed questions. Objectors were also given the opportunity to submit written evidence and the Committee is grateful to those objectors who chose to do so. Written evidence was also received from Scottish Natural Heritage
(SNH), the Scottish Environmental Protection Agency (SEPA) and Historic Scotland (HS) on the environmental statement. The promoter was invited to respond to the points raised in all of this written evidence. In addition to submitting written evidence the promoter, SNH, SEPA, HS and a panel of objectors appeared as witnesses at the Committee’s meeting on 21 March 2005 when the adequacy of accompanying documents was considered.

212. Each document is considered in more detail below.

Promoter’s Statement
213. As stated above, this document sets out the arrangements made by the promoter with respect to notification. The delays to the Bill as a result of the failure by the promoter to correctly and timeously notify affected persons has been well publicised. Before dealing with that issue and offering recommendations on how to take this matter forward, it will be useful to first broadly set out the background.

214. Rule 9A.2.3(d)(i) of Standing Orders requires notification of the proposed Private Bill to be given to persons “having an interest in heritable property affected by the Private Bill”. The determination by the Presiding Officer, as published in Annex G of the Guidance on Private Bills, states that the persons who are to be notified by the promoter are those 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, where not covered by (a) or (b), the council tax register; or
- as ‘the owner’, ‘the lessee’ or, as the case may be, ‘the occupier’ of any land or buildings (other than the owner, lessee or occupier of which cannot be ascertained after reasonable inquiry).

215. The promoter’s general approach to notification was outlined in its written evidence to the Committee where it stated that the promoter—

- visited properties and completed land interest questionnaires;
- used OS mapping to question landowners about neighbouring properties;
- contacted major landowners and their land agents to request details of landholdings;
- visited local authorities to collect information about land in public ownership;
- supplemented this information, as necessary, with information from Registers of Scotland “where the land is registered”;
- referred to the electoral roll;
- made no reference to the valuation roll or council tax register because these “are not made publicly available”.

216. First, however, a promoter must identify which properties are “affected” by the Bill. It was clear to the promoter in this case that “affected” included all properties within the limits of deviation and the limits of land to be acquired or used. However, it was also considered that if the intention had been that the only
landowners entitled to notice were those within these limits, the Standing Orders
would have said so. The promoter’s legal advice therefore was that “affected” must
be intended to go wider than this and that, in the absence of a definition, the
promoter would have to write a set of ground rules to which referencers must
work.

217. The view taken by the promoter was that properties were to be treated as
“affected” if they directly abutted i.e. shared a boundary with any of the Bill limits.

Land referencers contracted by the promoter were under instruction to reference
the route on that basis.

218. The notification letters, which are issued shortly in advance of the Bill being
introduced, are delivered in person or by recorded delivery to a person’s normal
place of residence or business, or registered office. Details and evidence of the
delivery should be retained by the promoter in order that it can be produced should
any dispute arise as to the correctness of the details contained in the Promoter’s
Statement (a signed receipt of delivery, for example, is sufficient).

219. The function of the notification letter is to inform the affected person of the
promoter’s intention to introduce the Private Bill into the Parliament on or around a
specified date (in this case 11 September 2003), of any land take, of the
procedures to be followed should the individual wish to lodge an objection, and
details of who to contact for further information. The letter informs the person of
when the 60-day objection period will commence.

220. The first errors with the notifications were brought to the Committee’s
attention in September 2004, shortly before the Committee was to commence its
oral evidence meetings as part of its consideration of its Preliminary Stage
functions. The Committee felt it could not, at that stage, in the interests of fairness,
commence with these meetings while an objection period was running. Also, given
the decision to allow potential new objectors the same opportunity to submit
written evidence on the business case and the adequacy of the accompanying
documents, the Committee had to delay proceedings on its consideration of the
Bill.

221. The Committee was particularly mindful of the impact such a decision would
have on existing objectors and the concern and anxiety that a delay of several
months would have, particularly on those faced with the compulsory acquisition of
their properties.

222. The memorandum submitted by the promoter explained its reasons for its
failure to notify 130 properties in the Galashiels and Gorebridge areas. In the light
of such a large notification discrepancy the Committee asked the promoter what
assurance it could give that no other notification discrepancies would emerge. The
promoter responded—

‘the realities of land ownership are that this can never be absolutely guaranteed.
However, the fact that no further errors had been notified by landowners in respect

58 Committee meeting 16 September 2004, paper WAV/S2/04/6/1, paragraph 34
of a project that has been publicly known in detail since September 2003 is, it is submitted, a strong indication that there is nothing further requiring notice’.

223. However, since September 2004 a number of further notification errors have occurred. Indeed, as recently as the Committee’s meeting on 22 June 2005 the Committee was still considering objections that have been lodged as a result of the failure of the promoter to notify in 2003.

224. The promoter indicated in written evidence to the Committee in September 2004\(^\text{59}\) that where there is uncertainty, land referencers are instructed to err on the side of caution and issue notices to the widest possible set of properties, even though some may not be strictly entitled to them. **The Committee is not convinced that the referencers put this instruction into practice.**

225. Due to further concerns over the notification process, the promoter, at the Committee’s meeting on 28 February 2005, announced that it was to undertake a comprehensive review of its referencing process that was expected to take four weeks but which, in the event, took eight. While the Committee supports the promoter’s decision to review its referencing process, **the Committee does not understand why such a review was not carried out earlier. Had it been, lengthy, inconvenient, and the Committee expects, costly delays to the Bill could have been avoided.** The report of the referencing review was submitted at the end of April 2005.\(^\text{60}\)

226. The referencing review report revealed that a total of 258 further notifications were issued as a consequence of further errors discovered by the review. Of these, 217 related to land within the limits of deviation/limits of land to be acquired or used (LOD/LLAU) (i.e. land subject to compulsory purchase or temporary use under the Bill) and 41 to abutting land affected by the Bill. There were 98 owners whose land could be compulsory purchased under this Bill who had not received formal notification of the promoter’s intentions.

227. According to the promoter, the errors can be traced back to a much smaller number of “instances” of error. For example, 13 instances of error in the LOD/LLAU area related to 98 plots of land and generated 217 notifications, and 19 instances in relation to abutting land generated 41 notices. **Whatever way this is explained, this is a significant error affecting a considerable number of individuals that has contributed to the Committee’s overall impression that the performance of the promoter and its professional consultants has not been adequate in certain respects.**

228. The promoter contends that it is not possible to achieve 100% accuracy in referencing due to human and organisational error. **Be that as it may, the Committee takes the view that the promoter could, and should, have got much closer to that 100% than it did and it certainly refutes the promoter’s claim that the level of errors was “reasonable”**.

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\(^{59}\) Committee meeting 16 September 2004, paper WAV/S2/04/6/1, paragraph 5

\(^{60}\) Report by Land Aspects on referencing review and promoter’s memorandum on referencing review, vol. 5
229. The promoter considers land reference to be an initial investigation of prima facie land interests, not a title search. Also, its interpretation of the determination at Annex G of the Guidance on Private Bills was that the various sources of information listed (property registers, valuation roll, council tax register, reasonable enquiry) were possible sources of information and that none is definitive and all information must be considered. It took the view that this interpretation ensures that reliable and up-to-date information is obtained and relevant interests are identified.

230. The Committee considers that the promoter’s interpretation of the determination is supportable because of the use of the disjunctive “or” between paragraphs (a), (b), (c) and (d) of the determination. Nevertheless, this does not explain the promoter’s neglect in making full use of information available in both the Land Register and the Register of Sasines. In the Committee’s view, that approach has contributed to the notification failures.

231. The Committee has been far from impressed by the performance of the promoter and its consultants on its arrangements to notify correctly. The Committee was also not wholly satisfied with the promoter’s responses to detailed questions about the referencing process. However, as a Committee, ‘we are where we are’ and therefore recognise the need to make progress, particularly for the benefit of Bill objectors and others affected by the railway. Therefore, given the very full review of the referencing process, the Committee now considers that the promoter has complied with the requirements of Rule 9A.2.3 and has provided adequate information to allow proper scrutiny of the Bill. Given the widespread publicity generated by the Bill, it may be reasonable to conclude that all persons in the vicinity of the proposed works have had every opportunity to become aware of the proposed scheme.

232. The concern expressed by the promoter about the interpretation of the determination suggests that it may be useful to review its terms. It may also be helpful to consider whether further clarification could be provided on the meaning of “affected” in Rule 9A.2.3(d)(i).

233. Given the difficulties the promoter has had with notifications for the Bill, and the adverse effect on the Committee’s timetable for progressing it through Parliament, the Committee takes the view that these requirements should be looked at for the future.

234. It is suggested that notification has a single purpose with two distinct target groups. The purpose is to give notice to those who will, or may, be affected by the proposed works. This is partly achieved by the requirement for newspaper intimation with a second requirement for individual notices to be served. Those affected fall into two categories namely, persons:

- whose land/property will be compulsory purchased or temporarily acquired or used should the scheme proceed; and
- who may be affected by the proposed scheme (at any stage, be it construction, operation or maintenance).
In relation to those subject to compulsory purchase the Bill enables the promoter to obtain a title to the land. That title will be registered either in the Land Register or in the Register of Sasines. Once the Bill is passed and the scheme proceeds, the promoter undertakes full title searches to ascertain ownership and take title to the land (on payment of compensation). The full title search can be time consuming, requiring in-depth legal knowledge, but it requires to be undertaken.

It is not clear, other than to save time and expense (in the short term) why such searches are not undertaken at the outset for the purpose of notification. While the promoter has indicated this is a costly exercise, the Committee observes that it must be undertaken at some stage. Arguably undertaking a lesser searching exercise at the notification stage involves some degree of duplication of effort (and cost). The Committee therefore considers there to be no good reason why a full title search should not be carried out to inform notification of persons whose land is liable to compulsory purchase or temporary acquisition.

In relation to the time this takes, it is the Committee’s understanding that a professional search of the two property registers held by the Registers of Scotland would simplify the process and save considerable time. Registers of Scotland, who gave oral evidence to the Committee on 1 June 2005, felt that an appropriate methodology would be to search the registers as a starting point. According to Registers of Scotland, searching the Land Register is a simple and quick process, conducted either online or at one of the Registers of Scotland’s customer service centres. It would reveal information about properties in any area (including the railway corridor) including details of ownership, registration and the surrounding area. Searching the Register of Sasines is more time consuming but can produce good results. Taken together and undertaken professionally a search of both registers would identify most heritable properties.

The promoter indicated that a reference is a snapshot in time and subject to constant change as land is bought and sold. However all land bought and sold is now registered in the Land Register and details are easily obtained. Registers of Scotland also maintain a register of pending transactions recording entries prior to them being made in the Land Register.

The Committee recommends to future Private Bill Committees that they give serious consideration to determining to what extent efforts have been made by the Private Bill promoter to identify persons whose land is subject to compulsory purchase etc.

Turning to the second category of affected persons, those affected short of compulsory purchase, the first issue is to determine the meaning of ‘affected’. Other compulsory purchase models have comprehensive rules setting out for each type of scheme who is considered to be affected so as to require notification. The Parliament has not adopted such an approach – Rule 9A.2.3(d)(i) of Standing Orders does not further define ‘affected’. This approach has apparently created uncertainty for this promoter who determined that all land abutting the land being taken or used for the scheme is affected and such owners and occupiers should be notified. This is clearly a bare minimum requirement.
241. One possible approach to defining ‘affected’ would be for the Parliament to set a distance from the scheme within which properties would be considered to be ‘affected’. In effect this is what the Waverley promoter did, setting the distance at touching.

242. In considering a definition of “affected”, it is useful to look at the rights of persons to object. Anybody may object but, for an objection to be admissible, an objector must specify how their interests would be adversely affected by the Bill. As whole Bill objections have generally been rejected on the grounds that the objector has not proved how they would personally be adversely affected by the Bill, affected has become a more personal issue - noise, vibration and loss of amenity being the common ones. If it is accepted that noise and vibration are the most significant personal affects this may suggest a distance-based approach. It is for consideration what distance, if any, beyond abutting should be specified.

243. If it is accepted that land abutting the works should qualify for notification, one option is to leave the onus on the promoter to determine who else is ‘affected’ under the Parliament’s Rules. This could be achieved by requiring intimation on persons whom the promoter considers would reasonably (or in the word used at Westminster) ‘specially’ be affected. This could be done by the promoter on the ground visually identifying a property that, while not abutting, could still be adversely affected. It would then become a matter for the promoter, using their knowledge of the proposed scheme and the area, to determine who is affected (beyond those immediately abutting the proposed works).

244. The Committee therefore recommends that Parliament officials continue to investigate, and discuss with interested parties, options for improving understanding and clarity of purpose in the requirements for notifying affected persons and to recommend any necessary changes to the Presiding Officer’s determination and the Guidance on Private Bills to the appropriate Parliamentary authorities.

Promoter’s Memorandum

245. Rule 9A.2.3(b) of Standing Orders requires that the Promoter’s Memorandum should set out—

- the objectives of the Private Bill;
- whether alternative ways of meeting those objectives were considered and, if so, why the approach taken in the Private Bill was adopted; and
- the consultation, if any, which was undertaken on those objectives and the ways of meeting them and on the detail of the Private Bill together with a summary of the outcome of that consultation.

246. Perhaps the issue of most concern to objectors has been on the adequacy of the promoter’s consultation arrangements. It was referred to in several objections. Consultation, by its nature, can be an issue that triggers frustration amongst affected individuals. While there may be some objectors to the Bill who were perhaps not directly consulted, or did not know about the proposal for the railway project until a notification letter was delivered to them, the Committee
wished to consider whether those few objectors who may not have known about the project constituted inadequate consultation by the promoter.

247. The promoter’s consultation campaign commenced in January 2002 and, at that time, while fairly widespread, was focussed particularly on people who live and work in the railway corridor area. The second phase of the campaign in July 2002 involved public exhibitions and the launch of a website and hotline number as a means for members of the public to communicate with the promoter.

248. Other aspects of the promoter’s publicity and consultation campaign have been a series of public meetings to outline the project (in evidence the promoter referred to over three hundred such meetings with community groups, residents groups and community councils), manned public displays exhibited at various places throughout Edinburgh, Midlothian and the Borders (although concern was expressed by objectors at the ability of the individuals manning these displays to respond to detailed questions from people), and a wide range of information material including the ‘On Track’ newsletter aimed at keeping people informed of the project.

249. One group of individuals who expressed strong concerns about the promoter’s consultation arrangements were landowners, some of whose land may be subject to compulsory purchase. They referred to a lack of information from the promoter about the amount of land being taken, when and for what purpose. The promoter, in response, indicated that it had sought to meet with a number of landowners to try and indicate the impact of the scheme on farming operations, the amount of land required, compensation issues and timescales. While this is certainly to be encouraged, the general feeling of the Committee is that the promoter could have been more pro-active and accessible in making clear, informed and precise information more quickly and freely available to such groups, given the particular vested interests they have.

250. A further concern expressed by objectors was the lack of reports, feedback or action points by the promoter arising out of meetings held and the delays in the promoter responding to requests for information. While the promoter referred to over 40 changes that have been made to the scheme as a result of dialogue with interested parties both pre- and post- Bill introduction, the Committee is left with the impression that the promoter could have been more pro-active in providing timeous, informed and complete responses to individuals, whether objectors or not. Certainly, the Committee might have expected, given the delays to the Bill’s timetable, for more evident progress to have been made in negotiating with objectors, leading to objections being withdrawn.

251. On the whole, the Promoter’s Memorandum does specify the policy objectives of the Bill, it indicates that, in the view of the promoter, there are no alternative approaches or line alignments that could achieve all of the policy objectives and it details the promoter’s consultation arrangements. However, the Committee, while generally satisfied by the approach taken by the promoter with respect to consultation, believes there are some key areas in which there is room for improvement.
252. While therefore, on the whole, based on the evidence received, the Committee considers that the promoter has complied with the Presiding Officer's determination on the Promoter's Memorandum, it makes the following recommendations for follow-up by the promoter—

- to make contact with all landowners within one month of the publication of this report offering early meetings with them to discuss precisely and in detail all aspects of any land take required;
- to produce and make available clear, understandable and pertinent guidance on compensation to those individuals subject to permanent or temporary compulsory acquisition, this to be available and issued in advance of the commencement of the Consideration Stage;
- to set and thereafter meet targets (to be set at no more than 20 days) for responding to correspondence from interested parties, particularly objectors to the Bill, seeking information on the scheme.

Maps, plans and sections and Book of reference
253. Rule 9A.2.3(c)(ii) of Standing Orders states that these documents shall contain such information as the Presiding Officer may determine. The determination itself is largely technical and details the scales that the maps, plans and sections must be produced in along with the level of detail that must be shown (alignment of tracks, lines of deviation etc).

254. The book of reference must show the names and addresses of the owners, lessees and occupiers of all lands and buildings that may be compulsorily acquired or used.

255. Concern was expressed by objectors, particularly landowners, about the quality and usefulness of the maps, plans and sections that they received from the promoter (for example, that they did not show clear enough information to identify the specific plots of lands referred to or for what purpose the land was required).

256. The promoter, in response, indicated that the purpose of the plans is to identify land in respect of which a notice has been issued and not to detail the actual works that might be carried out on that land. In addition, the notification letter does provide contact details of who to contact to discuss such issues.

257. While the Committee accepts that the Rules do not require the promoter to specify the purpose for which the land is being taken, it would of course be extremely useful to those concerned, particularly farmers, if the promoter had made this information freely available, or now does. Given the general concerns expressed by landowners, and referred to earlier, more constructive dialogue by the promoter with such parties would be welcome. The promoter making engineering layouts available to landowners is a good example of this and the promoter is invited to consider whether this type of information can be made available.

258. In the light of concerns expressed by objectors and the response by the promoter, Parliament officials considered what changes were required to the Presiding Officer’s determination to facilitate the production of clearer, more useful
maps, plans and sections that will facilitate understanding by landowners. This revised determination has now been approved by the Presiding Officer.

259. **On the whole however, the Committee considers that the promoter has submitted its maps, plans and sections and the book of reference in accordance with the determination and, as such, are adequate to allow for proper scrutiny of the Bill.**

**Estimate of Expense and Funding Statement**

260. Rule 9A.2.3(c)(i) of Standing Orders states that the Estimate of Expense and Funding Statement shall contain such information as the Presiding Officer may determine. The determination itself states that it must contain a detailed cost breakdown of each element of the project and an estimate by the promoter of the timescales over which these costs will arise along with an indication of the margin of uncertainty.

261. The promoter has submitted an Estimate of Expense and Funding Statement which provides a breakdown of the estimated £130 million cost to construct the railway (construction, fees, signalling etc). The £130 million is also broken down by funding source—

- Scottish Executive £110,610,123
- Strategic Rail Authority £4,000,000
- Local contributions £15,000,000

262. The project costs no longer reflect the information shown in this Estimate of Expense and Funding Statement. A more up to date table (showing the figures at 2005-06 prices) can be found in paragraph 182 above.

263. Again, Parliament officials have considered the value of the information that this document is required to show and the Presiding Officer’s determination has been enhanced to now require more detailed information from the promoter relating to funding sources, costings and timescales.

264. **While the promoter appears to have a variety of funding sources in place to cover the estimated project costs, the Committee calls upon the promoter actively to seek out further sources of funding that would then give local residents the assurance that, were project costs to increase, it is not at the expense of increased council tax payments or other local authority services. The Scottish Executive is invited to note this position and to work with the promoter in providing these necessary safeguards.**

265. In so far as the requirements of Standing Orders is concerned the Committee is satisfied that the promoter has conformed to Rule 9A.2.3(c) relative to the production of an Estimate of Expense and Funding Statement.

**Environmental statement**

266. The environmental statement is one of the key accompanying document, setting out the environmental impact of the project. It is a document that will be of particular interest when considering the detailed aspect of individual objections.
during the Consideration Stage. Accordingly, the Committee was keen to hold the
document up to a robust scrutiny. Bond Pearce acted as adviser to the Committee
in its consideration of the environmental statement. The environmental statement
attracted written comments from a number of objectors when they were invited by
the Committee to submit written evidence on the adequacy of the accompanying
documents.

267. Bond Pearce raised a number of issues which were further explored with
the promoter. The Committee also commissioned a peer review (an independent
analysis) of the chapters within the environmental statement on noise and
vibration and local air quality as these areas were outwith the expertise of Bond
Pearce. This peer review was carried out by Casella Stanger.61

268. In the case of the noise and vibration chapter Casella Stanger concluded
that the noise and vibration assessment has, in general, "been carried out using
the correct prediction and assessment methodology and according to best
practice" but there is a need for assessment of ambient noise and of significance,
inclusion of the numbers of receptors affected. On the air quality chapter it
concluded that the assessment is not the most robust or transparent, but that "it is
highly unlikely that the conclusion of the assessment would change if the errors
identified within the chapter were corrected, or additional work was carried out".
However, it does consider that further work is required on the potential impact of
emissions from idling diesel locomotives. The promoter was subsequently invited
to respond to this review.

269. In its response the promoter maintained that full consideration was given
to these matters. The annex to its response comprises a consideration of further
design information, measurements of baseline noise levels to assess the overall
potential noise impact at specific locations, and a refinement of mitigation in the
form of noise barriers. It concludes that in some locations where potential noise
impacts were predicted noise barriers will not be needed. In other locations noise
barriers will be needed to mitigate the predicted impacts.

270. Similarly on air quality, full comments were provided from the promoter by
way of explanation or (in some cases) disagreement. The promoter disagreed with
Casella Stanger on the need for a statement of the focus of the air quality
assessment, the need to consider emissions from diesel engines, and the need to
present the chapter in a clearer or more comprehensive manner.

271. In its response, Casella Stanger accepted the promoter’s comments on
noise and vibration and both the work carried out by it and the commitment to
carry out further additional work during detailed design stage, are recognised as
having addressed many of Casella Stanger’s concerns. Similarly all the comments
by the promoter on air quality are accepted by Casella Stanger and where there
are differences, these are "accepted as being down to differences in approach and
reporting styles".63

61 Peer review by Casella Stanger on noise and vibration and local air quality chapters of
Environmental Statement, vol. 8
62 Promoter’s memorandum on Casella Stanger peer review, vol. 8
63 Casella Stanger response to promoter and objector comments, vol. 8
272. On mitigation, the theme of the questions was that there was little detail in the statement on mitigation for such matters as noise, traffic, habitat loss, industrial archaeology and landscape/visual impact. On noise, the promoter has stated its commitment to undertaking the mitigation measures proposed in consultation with affected householders.

273. On habitat loss, the promoter provided details of proposed further engagement and consultation with statutory bodies and a concept landscape design (to include types of habitats). This will be developed further at detailed design stage in consultation with relevant bodies such as SEPA and SNH.

274. Satisfactory explanation was also given of the assumptions made on the type and weight of trains and revised levels of usage for station car parks.

275. In summary, the promoter has produced comprehensive responses to the Committee’s questions on the environmental statement, the project description and related development and the peer review on the noise and vibration and air quality chapters.

276. A number of commitments were made by the promoter, in particular, to carry out further noise survey work and specify preferred noise barrier locations and a final transport assessment to enable the residual impact on traffic on the A7, A720 and other minor roads to be assessed; produce a draft concept landscape design, to include types of habitats; consult fully with the River Tweed Commissioners, SEPA and Historic Scotland to set up a formal consultative and approvals mechanism; produce a draft updated code of construction and to submit this to SEPA for comment; provide SNH with further information and details of mitigation measures regarding specific topics; provide the Committee with separate memoranda dealing with railway regulation and community access and severance issues. Most of these have now been provided.

277. The promoter was also invited to respond to the detailed comments made by objectors. While many of the concerns raised by objectors are more appropriately for the Consideration Stage, there were a number of issues that were pertinent to this Stage. For example, the residents of Victoria Gardens in Newtongrange expressed concern at the use by the promoter of the planning advice notice (PAN) 56 guidelines on outer noise limits. The objector was concerned that these guidelines were not specifically relevant to railway developments and that the lower World Health Organisation threshold was appropriate. The promoter in response drew attention to the fact that PAN 56 does take account of the WHO guidelines. Concern was also expressed by other objectors over the siting of noise receptors to measure noise levels. The Committee has noted as adequate the responses by the promoter to such concerns.

278. However, stemming from this, the Committee recognises the very real concern and anxiety felt by objectors on the prospect of trains running by properties at half hourly intervals and the impact this may have. Accordingly, the Committee is requesting the promoter actively takes forward now detailed
discussions with affected objectors with a view to ascertaining the most appropriate level and type of mitigation required (if any) for each property. This will hopefully go some way to alleviating concerns that currently exist amongst objectors. It is hoped that this could assist the Committee’s work at Consideration Stage.

279. Turning to the environmental regulators, SEPA was generally content with the approach taken by the promoter and that concerns expressed had been adequately addressed by the promoter. Some concerns existed in respect of drainage abatement measures. However, the promoter, after discussion with SEPA, carried out a flood risk assessment that indicated there was not much risk to the railway from flooding. A lot of dialogue has also taken place on the draft code of construction.

280. Historic Scotland was generally content with the environmental statement although an issue was raised in relation to a scheduled ancient monument, specifically, the Elginshaugh Roman camp, native fort and palisaded enclosure. It appears that this monument had been accidentally omitted from the environmental statement by the promoter. The promoter has now given assurances to Historic Scotland that all impacts in the area have been moved therefore the monument will be unaffected by the proposed development, although discussions will continue to ensure the site is protected. The Committee observed that this assurance was only given shortly before the witnesses were due to appear before the Committee to give oral evidence.\(^\text{64}\)

281. Historic Scotland welcomed the proposed repairs to the Glenesk Viaduct which will be brought back into use. With respect to listed buildings along the route, including footpaths and bridges, the promoter has indicated it will ensure that Historic Scotland is fully involved at the project’s detailed design stage.

282. Scottish Natural Heritage on the other hand expressed deep concerns about the lack of dialogue with the promoter and the general lack of design and mitigation detail in the environmental statement. On issues such as contamination, the impact on aquatic ecology, and a general lack of detail on a fluvio-geomorphological assessment (which would input into the appropriate assessment). This had made it difficult for SNH to assess the scheme’s adverse impact. Such was the perceived lack of communication and information between the promoter and SNH that the Committee instructed Parliament officials to facilitate discussions between parties with a view to progressing matters.

Appropriate assessment

283. The environmental statement acknowledges that the railway is located within a valuable ecological landscape resource providing habitats for a number of protected and rare plants and animals. Over half of the length of the proposed railway lies either in close proximity to, or direct contact with, the Gala Water which is part of the River Tweed candidate Special Area of Conservation (cSAC), which has now been adopted by the European Commission as a Site of Community Importance (SCI). The Tweed and the Gala Water are clean river systems of high

\(^{64}\) Official Report, 21 March 2005, col. 312
conservation and ecological value that support a diverse range of plant and animal species. The presence of otters, badgers, reptiles, bats, amphibians and areas of semi-natural habitat have been identified along the route. Extensive river works are proposed for this stretch including redirection of the Gala Water and 38 river bank engineering works. In addition extensive lengths of the river bank are identified for permanent or temporary acquisition for construction and maintenance of the project and the upgrading of a major river crossing.

284. The Ecological Impact Assessment (EcIA) (attached as Annex F to the environmental statement) acknowledges that there is potential for a significant negative impact on this designated site, in particular during the construction phase of the railway, in general because of the close proximity of many of the works to the water and associated water bodies. SNH agrees with the opinion of the EcIA that potentially significant impacts are likely to occur and will require extensive mitigation and monitoring. Designation as a cSAC gives the River Tweed a high level of protection from potentially damaging developments.

285. As the works are likely to have a significant effect upon the ecological value of the cSAC, the Parliament must undertake an appropriate assessment of the implications for the site in view of its conservation objectives (by virtue of the Conservation (Natural Habitats &c) Regulations 1994 (the Regulations). The detail of this will be considered by the Committee at Consideration Stage (should the Bill proceed to this Stage) and it will report its findings to Parliament before Final Stage. In the event of a negative assessment, the Bill could only be passed in the limited circumstances set out in the Regulations.

286. In carrying out this assessment, the Parliament will have regard to the views of SNH. In July 2004 SNH provided advice to the Committee on the adequacy of the environmental statement (amongst other things). SNH considered that insufficient information had been made available by the promoter for the purposes of appropriate assessment. In January 2005 SNH reiterated its concerns and sought to formally lodge an objection to the Bill. In a letter to the Committee of February 2005 SNH again reiterated its concerns over the continuing absence of detail on the construction, operation and maintenance of the proposed railway.

287. The requirement on the promoter to provide an environmental statement and information sufficient for the purposes of the appropriate assessment are independent of one another. Of course, there are some links between them and it is clearly preferable that promoters identify the need for such an assessment at an early stage. In this context it does seem that the promoter has not fully understood the level of information required by the Parliament to underpin its appropriate assessment. Given the lack of information, Parliament officials, on behalf of the Committee, have met with the promoter and SNH to facilitate discussion on the kind of information that requires to be made available and by when. The promoter is now fully aware of the negative impact on the Bill and its timetable if the Parliament is not in a position to fully comply with the requirements of the Regulations.

65 Scottish Natural Heritage statement (17 February 2005), vol. 9
288. Indeed, following the Committee’s meeting on 31 January 2005, a letter was sent to the promoter expressing concern that progress does not appear to have been made with regard to a number of the issues raised by SNH. In advance of the Committee’s oral evidence meeting on 21 March 2005 (at which the promoter and SNH appeared), the Committee sought written clarification from both parties on the issues that remain unresolved and on what action is proposed to address them.

289. Generally, progress now appears to be being made. The promoter has agreed, for example, to undertake further survey work and to provide more engineering detail. The promoter aims to complete the work necessary to inform the appropriate assessment by October 2005.

290. The Committee emphasises, in the strongest terms, the need for the promoter to make available sufficiently detailed information for the purposes of appropriate assessment.

291. Notwithstanding that further information requires to be made available for the appropriate assessment, the Committee considers that the promoter has submitted its environmental statement in accordance with the Rule and, as such, is adequate to allow for proper scrutiny of the Bill.

Conclusion
292. Overall, the Committee considers that the accompanying documents now satisfy the technical criteria that are set down in the Standing Orders and are adequate to allow for proper scrutiny of the Bill.

PRELIMINARY CONSIDERATION OF OBJECTIONS

293. The Committee is required to give preliminary consideration to any objections lodged against the Bill and reject any objection where the objector’s interests are, in the opinion of the Committee, not clearly adversely affected. A total of 140 admissible objections have been lodged against the Bill (an admissible objection is one that complies with Rule 9A.6.5 and the Presiding Officers determination). A fuller explanation and breakdown of these is given below.

294. The objection period to the Bill concluded on 10 November 2003. At that time there were 118 admissible objections to the Bill. Of these, four were to the whole Bill and specified provisions, two were to the whole Bill only, and the remaining 112 were to specified provisions only. The Committee gave preliminary consideration to these 118 objections, i.e. it considered whether the objectors have shown that they would be adversely affected by the Bill, at its meeting on 12 May 2004. At this meeting, it also considered five late objections lodged against the Bill. Here the Committee had to satisfy itself that the objector had shown good reason for not lodging their objection during the objection period. The Committee agreed that each of these five late objections had shown good reason.
295. The Committee therefore had 123 objections going forward for preliminary consideration (four to the whole Bill and specified provisions, three to the whole Bill only, and the remaining 116 to specified provisions only). The Committee agreed that those objections that relate either in part, or wholly, to specified provisions in the Bill should go forward to Consideration Stage. The Committee also agreed that those objections, that relate either in part, or wholly, to the whole Bill, should be rejected as the objectors' interests were, in the opinion of the Committee, not clearly adversely affected by the Bill.

296. Notwithstanding this decision to reject the whole Bill objections, the Committee agreed that some of the issues raised in them (such as project cost overrun, impact on local bus services) were likely to be pertinent to the Committee's consideration of the general principles of the Bill at Preliminary Stage. Indeed, evidence on some of these issues was taken and is reported upon. There were, therefore, 120 objections outstanding to go forward to the Consideration Stage.

297. However, the notification failures of the promoter gave rise to further batches of objections. At the Committee's meeting on 23 November 2004, the Committee considered a further seven objections, one to the whole Bill and specified provisions, the remaining five to specified provisions only (one of which was supplemental to an existing objection). Consideration of the seventh objection was held over to the following meeting. At the meeting, the Committee rejected the whole Bill element of the objection but agreed that those objections, or parts thereof, to specified provisions should go forward to Consideration Stage. That took the number of outstanding objections to 125.

298. At the Committee's next meeting on 14 December 2004, three further late objections were considered along with the objection held over from the previous meeting, one to the whole Bill and specified provisions (this objection was supplemental to an existing objection), one to the whole Bill and two to specified provisions only. However, the Committee agreed that the two late objections to specified provisions should not proceed to preliminary consideration as the objectors had not, in the opinion of the Committee, shown good reason for lodging their objections late. The Committee again rejected the whole Bill element of that objection (but agreed that the specified provisions part should go forward to Consideration Stage) and the objection entirely to the whole Bill.

299. At the Committee's meeting on 31 January 2005, a further late objection was considered. The Committee agreed that this late objection should not proceed to preliminary consideration as the objector had not, in the opinion of the Committee, shown good reason for lodging its objection late.

300. At the Committee's meeting on 1 June 2005, a further five late objections were considered. The Committee agreed that all five objections should be allowed to proceed to preliminary consideration. These objections were all to specified provisions and here the Committee agreed that an adverse affect has been shown and that, accordingly, the objections should go forward to the Consideration Stage. This increased the number of outstanding objections to 130.
301. At the Committee’s meeting on 22 June, a further two late objections (as a result of notification errors) were considered. The Committee agreed that both objections should be allowed to proceed to preliminary consideration. These objections were both to specified provisions and here the Committee agreed that an adverse affect has been shown and that, accordingly, the objections should go forward to the Consideration Stage. This increased the number of outstanding objections to 132.

302. At the Committee’s meeting on 29 June, a further late objection was considered. The Committee agreed that the objection should be allowed to proceed to preliminary consideration. The objection was to specified provisions and here the Committee agreed that an adverse affect has been shown and that accordingly, the objection should go forward to the Consideration Stage. This increased the number of outstanding objections to 133.

303. Taking into consideration that four objections have been withdrawn by objectors since November 2003, the number of outstanding objections to proceed to the Consideration Stage is 129. These objections cover a broad range of issues although those of noise and vibration, loss of amenity, land take, access and reduction in property values are particularly prevalent. Full consideration to these objections will be given by the Committee at the Consideration Stage (should the Bill proceed that far).

SUMMARY AND RECOMMENDATION

304. The Committee is concerned at the delays and difficulties encountered to date in the promotion of this Bill and that it has taken 21 months to get to this point in the first Stage of the Bill’s three-Stage process. The Committee notes the promoter’s lack of effective dialogue and communication with key parties involved in the project, for example, the failure to reach agreements with key stakeholders such as Scottish Natural Heritage in respect of the required work for the appropriate assessment, and also Scottish Water and Homes for Scotland on the house building programme. The Committee further notes the various notification failures by the promoter that, in the Committee’s view, have contributed to the delay in reaching this stage. Greater progress should have been made in presenting at the outset a more accomplished and agreed proposal to the Committee.

305. The Committee accepts that the creation of the railway would generally increase local opportunities in terms of employment and business opportunities. The Committee encourages the promoter to maximise the local economic and employment opportunities from the construction of the railway through the use of local suppliers, firms, services and workforce wherever possible.

306. While noting that none of the stated objectives of the railway are tourism-specific the Committee believes that the proposed railway could play an important role in maintaining and potentially increasing growth through increased tourist numbers. This would have a positive local impact on the economy and employment, on visitor attractions, shops, restaurants,
hotel and bed and breakfast accommodation establishments. The Committee’s view is that tourism connected with the proposed railway could, particularly through the proper promotion and marketing, timetabling and integration with local bus services and with due sensitivity to the surrounding environment through the carefully planned integration of the railway and its infrastructure, provide an important and valuable dimension to the area’s economic and social development.

307. The Committee notes the business case, in particular the projected NPV, and notes also the Scottish Executive’s position as principal funder that the assumptions underlying it must hold, including in particular the containment of costs. The Committee was disappointed in the responses of the promoter to some of the Committee’s concerns stemming from the business case and, in particular, to the conclusions and statements of the Committee adviser’s report which the promoter appears to have taken out of context. The Committee retains reservations that a number of the business case assumptions are just that, assumptions and aspirations rather than conclusions and realities. However the business case is not a required document for the Private Bill process and the Committee recognises that assessment of the business case is primarily a matter for those who would provide the funds for the proposed railway.

308. At this stage the Committee is content with the assurances that it has received from the promoter that it took account of the requirements of ECHR in drafting the Bill and devising the scheme. Further consideration of specific ECHR issues can be anticipated as part of any Consideration Stage scrutiny of objections.

309. Difficulties in obtaining the necessary information for the Parliament to undertake an appropriate assessment are noted and remain a live issue. The Committee encourages the promoter to continue to co-operate with Scottish Natural Heritage in ensuring the necessary information is gathered and presented timeously to the Committee. Notwithstanding these difficulties, the Committee considers that the promoter has submitted its environmental statement in accordance with the Parliament’s Rules and that it is adequate to allow for proper scrutiny of the Bill.

310. Difficulties with notifications to affected persons have dogged the Preliminary Stage and while the Committee is satisfied that the rules have finally been complied with a number of recommendations for the future are made in the body of this report. The Committee is however satisfied that the accompanying documents eventually complied with the requirements of Standing Orders.

311. The Committee is clear that further time and care should have been taken to prepare the scheme proposal and the Bill before its introduction into the Parliament. Future promoters of Private Bills should reflect carefully on their position and not seek to rush into introduction.

312. In light of the concerns expressed by the Committee in this report, the Committee calls upon the Scottish Executive, as the principal funder of the project, to consider whether this project is being competently managed and to reflect on what action is required to improve the performance of the promoter and its advisers and consultants in advance of the Consideration Stage.

313. The Committee recognised the feelings of isolation and exclusion felt in the Borders summed up by the following passage:

“We are in great danger of being seen as stuck down at the bottom of Scotland, and we want to be part of a whole Scotland. We have a new Parliament and we want to be part of the new Scotland, but unless we have proper transport links, we cannot be.”67

This issue goes to the heart of the case for the railway, with the railway seen as the catalyst for regeneration and in particular the attraction of inward investment into the Borders. The Committee accepts the feeling of remoteness and disconnection that the above quote encapsulates.

314. Central to the case for the railway is the proposed house building programme. This is critical particularly to the patronage figures and thus the anticipated revenue. Challenging completion targets presented by the promoter require to be met, planning control issues and infrastructure investment require quick resolution. The Committee notes the Minister’s confidence that Scottish Water is committed to support for development including housebuilding projects.68 The Committee believes that more requires to be done and therefore recommends that, before the Parliament makes a decision on whether the Bill should be passed at Final Stage, assurances should be given by Scottish Water and the promoter, as well as the Scottish Executive, on the provision of the required water and drainage infrastructure to support all the proposed house building. Further updates are sought from the promoter on progress with the house building programme during Consideration Stage. The Committee will report further to Parliament on this aspect before Final Stage.

315. The Committee is at present, on the evidence before it and principally on social inclusion grounds, persuaded that a Borders Railway should have a stop in Stow. The Committee invites the promoter to bring forward the necessary memorandum and plans to allow affected persons to have an early opportunity to lodge any objections they might have to a station in Stow.

316. The promotion of the railway cannot be to the detriment of bus services in the Borders and the Committee calls on the local authorities, local bus operators and others to ensure careful integration between trains

67 Official Report, 28 February 2005, col. 92
68 Official Report, 22 June 2005 col. 397
and buses. This is also vital to maximise opportunities and minimise inconvenience to visitors.

317. However, overall the Committee is satisfied that it has now been presented with sufficient information to enable it to consider and report upon each of its Preliminary Stage functions set out in paragraph 3 above. The Committee believes that the reintroduction of the railway will assist in tackling social exclusion in both areas, particularly in the Borders. It could improve accessibility and tackle the feeling of disconnection from the rest of Scotland that exists in the Borders. It could also provide valuable support to the tourism industry in the Borders. The Committee retains concerns in relation to the financial assumptions including housing, patronage and costs but, as indicated earlier, recognises these are matters for the Scottish Executive as principal funder to be satisfied upon and notes the clear position to continue to monitor each of these aspects set out by the Minister.

318. The Committee therefore recommends to the Parliament that the Bill should proceed as a Private Bill and that the general principles be agreed to.\(^{69}\)

\(^{69}\) Christine May MSP dissented: see Minority Report at Annex A.
ANNEX A

MINORITY REPORT TO THE PRELIMINARY STAGE REPORT FOR Waverley Railway (Scotland) Bill

1. I find myself in agreement with the views of the Committee in the majority of its report on the Preliminary Stage of this Bill. However, I cannot support the final conclusion that the Bill should be recommended to the Parliament to proceed as a Private Bill for the following reasons.

2. The supporting evidence does not demonstrate a sufficiently robust business case in its financial models, planning assumptions and passenger usage numbers which the promoter has said are on the conservative side, but the Minister for Transport himself regarded as ‘appropriate and agreed, rather than cautious’.

3. Whilst the social case for the railway may be stronger than the economic case, this proposal is based on a model which cites economic viability. In my view, the evidence does not make a sufficiently robust case for either the social or economic benefits.

4. The concerns of the Committee over costs, and the propensity of major capital infrastructure costs to rise, have not been addressed by the promoter. It is not sufficient to state that costs will not rise, and that all efforts will be made to ensure that they do not. Rather, it is only prudent to have a robust plan for funding unexpected contingencies (or those cost rises which are a regular feature of most major infrastructure projects of this type). If the funding from the Scottish Executive is capped, as the Minister for Transport has assured the Committee, then there are few other sources other than the council tax payer to make up any shortfall. Assumptions about future possible funding from Europe are, at very best, aspirational, and at worst, unlikely. The evidence provided to the Committee on this matter does not demonstrate a realistic or robust approach.

5. The case for a phased introduction of this line, firstly to Gorebridge where the economic case is overwhelming and most of the economic benefits are concentrated, and subsequently to Tweedbank should have been considered, analysed and presented alongside the case for the construction of the line as a single project.

6. Finally, if Parliament is minded to approve this project to the next Stage, it is essential that the financial assumptions and likely costs are considered either by the Finance Committee or the Audit Committee of the Parliament, given the potential for any cost overrun to result in the Scottish Executive having to meet such costs from its budget, with the resulting ‘knock-on’ impact on the remainder of the Scottish Executive’s transportation and other budgets. If cost rises are
substantial, there is serious risk of other major infrastructure projects having to be delayed by a significant number of years, with consequent increases in their costs.

Christine May MSP
30th June 2005
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