

PROPERTY SCHEMES

Need to sell scheme

Panel guidance





Department for Transport

High Speed Two (HS2) Limited has been tasked by the Department for Transport (DfT) with managing the delivery of a new national high speed rail network. It is a non-departmental public body wholly owned by the DfT.

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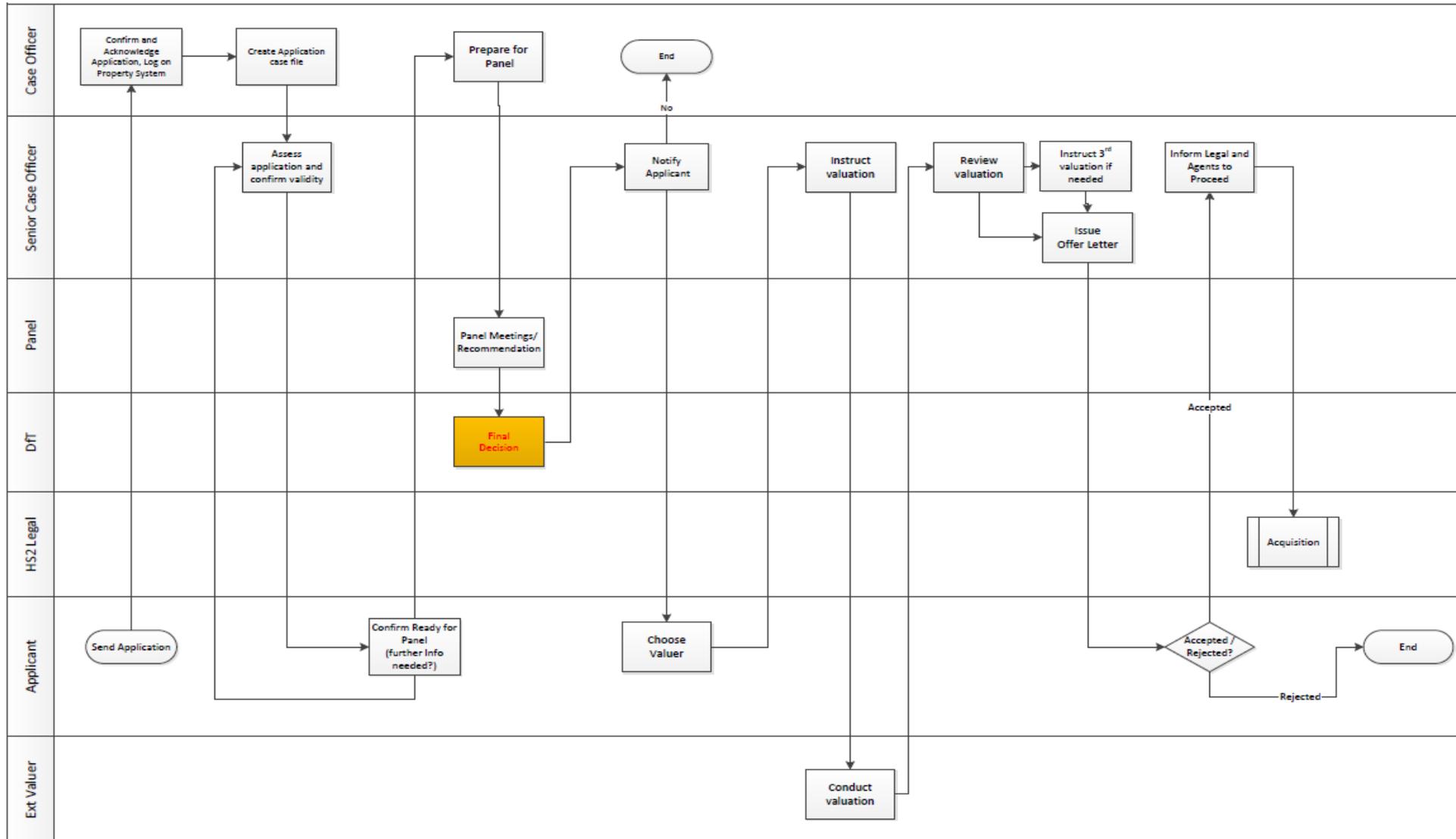
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1 Introduction

- 1.1.1 The Need to Sell (NTS) scheme is intended to assist property owners whose properties may be affected by High Speed Two (HS2) - the proposed high speed railway between London, the West Midlands and Manchester and Leeds - and who have a compelling reason to sell their property, but are unable to do so other than at a significant loss due to HS2, or who, if they are unable to sell their property, would face an unreasonable burden in the near future.
- 1.1.2 Under the NTS scheme, applications from property owners are considered by an independent panel which makes recommendations to the Secretary of State for Transport on whether the Government should offer to buy individual properties. The Secretary of State has delegated decision making in the majority of cases to a number of senior officials (decision makers) from the Department for Transport (DfT). Where there is disagreement between the panel and decision maker, decisions are made by the Secretary of State or a minister with delegated authority.
- 1.1.3 This document sets out the guidance and operating procedures for the panel. The full guidance for applicants and the application form is provided to panel members as part of their training, as well as to every panel meeting.

2 Outline of process

The broad outline of the NTS application process is set out in the flowchart below.



3 Panel constitution and working arrangements

3.1 Membership

- 3.1.1 An NTS panel is made up of three independent panel members. A pool of panel members has been recruited so that there are a number of individuals who could be called on to sit on a panel. This means that the individuals attending each panel meeting will vary according to availability and on a rota basis.
- 3.1.2 The role of Chair for each panel meeting will rotate between the panel members.
- 3.1.3 The additional responsibilities of the Chair are set out further below.

3.2 Quorum

- 3.2.1 The quorum for all panel meetings is three members.

3.3 NTS Secretariat

- 3.3.1 The schemes manager oversees the NTS process from applications through to issuing decisions and, in accepted applications, the purchase of properties. The schemes manager is supported by a secretariat, whose role includes arranging and overseeing the panel process. The NTS Secretariat will not be involved in determining recommendations in respect of individual applications. In relation to the processing of applications, the Secretariat is responsible for:
 - a. developing and maintaining a system for managing applications, including ensuring compliance with HS2 Ltd's Privacy Notice;
 - b. receiving, processing and checking applications;
 - c. liaising with applicants for any further information or evidence;
 - d. processing information received from applicants, including verifying required information and summarising all information received;
 - e. arranging panel meetings and supporting the panel members prior to and during the meeting;
 - f. writing a summary of each application (the template for the summary is attached at Annex A) and submitting these, along with all supporting evidence, to panel members in advance of panel meetings;
 - g. informing the panel of any previous recommendations made that could be relevant to the case being discussed, in order to ensure consistency in the panel's reasoning;
 - h. producing a formal note of each meeting outlining the recommendations of the panel with respect to each applicant and the supporting reasons for this, and clearing this with the panel;

- i. sending the agreed note as a submission to the DfT for onward submission to the Secretary of State for Transport;
- j. conducting checks on the provenance of evidence provided by applicants to protect against fraud;
- k. responding to applicants to inform them of the decision by the Secretary of State;
- l. seeking legal advice as necessary; and
- m. obtaining property valuations where the decision is to buy the applicant's property, calculating and communicating the offer and progressing the properties through the purchase process with the assistance of conveyancing solicitors and property professionals.

3.3.2 The Secretariat will provide the panel with the range of maps relevant to the application, the guidance for applicants, this guidance, a tablet computer for use in relation to property locations, and any legal or other advice that it has sought on an application in advance of the meeting. It will advise on the procedures of the NTS and the application of the criteria. The Secretariat can pause the panel meeting at any point in order to:

- ensure the correct operation of the meeting;
- correct the interpretation of criteria;
- help panel members find information within a case file;

or for any other reason at their discretion to ensure the correct operation of the scheme.

3.3.3 The Secretariat staff cannot give their opinion in relation to the merits of an application at the panel meeting, guide the discussion in terms of what the panel's considerations must be, or become involved in the making of recommendations. The recommendations are solely the panel's. The Secretariat can advise on whether wording and phrases are appropriate to be included in the communication of the recommendation to the decision maker.

3.4 Terms of reference

3.4.1 The role of the panel is to consider applications submitted by individual property owners and to make recommendations to the Secretary of State as to whether the Government should offer to buy those individuals' properties under the NTS scheme. The panel must establish in each case the extent to which all the qualifying criteria have been satisfied and make a recommendation to the Secretary of State on that basis.

3.4.2 The qualification criteria are set out in the Guidance and Application Form for Applicants, which is found on the HS2 Ltd pages on www.gov.uk (see in particular the section entitled 'Scheme Criteria' and <https://www.gov.uk/government/publications/hs2-phase-one-need-to-sell-scheme-guidance-and-application-form>)

- 3.4.3 When making recommendations against each individual criterion for each application, the panel should have regard to the specific wording of the NTS criteria. In circumstances where the panel expressly wishes to deviate from the wording used in the guidance, the Secretariat may need to seek legal input to assist in ensuring that the NTS criteria have been properly applied by the panel.
- 3.4.4 All members of a panel must apply consistently the criteria set out in the guidance and exercise sound judgement, to ensure that applicants are treated fairly.
- 3.4.5 Re-applications submitted within six months of the original decision being communicated should be considered only against the criterion or criteria upon which the previous application was refused (other than where there has been a relevant change in the applicant's circumstances). This will be clearly set out by the Secretariat for each application.
- 3.4.6 When considering a repeat application with more than six months between the previous decision and the new application, or where the applicant's circumstances have changed, a panel is not bound to follow the conclusions of an earlier panel or subsequent decision by the Secretary of State in relation to individual criteria. However, a positive earlier decision in respect of an individual criterion may be deemed to have created a 'legitimate expectation' on the part of the applicant that the criterion will be deemed met - for instance, if the factual circumstances have not changed since the earlier application was determined. A panel should therefore think very carefully before reaching a different conclusion from an earlier panel. In particular, the panel ought to take the applicant's expectation into account when weighing up relevant considerations and reaching its conclusion as to whether the criterion should be deemed met.
- 3.4.7 Applications that were submitted under the previous EHS that had not yet been considered by an EHS panel at the point of the launch of the NTS will be automatically transferred to the NTS panel for consideration, unless the applicant's property is within the rural support zone – in such cases, the applicant has access to either the cash offer or voluntary purchase scheme.
- 3.4.8 Applications submitted to the NTS where a previous application had been submitted under the EHS and the decision has been communicated to the applicants within the last six months will be considered only against the criterion or criteria upon which the previous application was refused. This will be clearly set out by the Secretariat for each application.
- 3.4.9 In carrying out its terms of reference and duty, a panel must have due regard to the principles of equality of opportunity, legality, procedural fairness, reasonableness/ rationality, and legitimate expectation.

In the case of applications in the 'reluctant landlord' category

3.4.10 The test relating to this category of applicant is set out in the Guidance and Application form in its entirety under criterion 1 (Property Type and Residency). It has been agreed with the DfT that the NTS will operate in a way that means the factual section of the evidence will be assessed by the panel under criterion 1, namely:

- evidence of ownership of the property;
- evidence of the occupancy requirement (in the way that it applies to owner-occupiers) from the point at which the applicant vacated the property;
- evidence of marketing the property for rental and any rental agreements;
- evidence of their current accommodation not being a property that they own.

3.4.11 Under criterion 5, the 'compelling reason to sell' test has two elements which need to be applied:

- First, that the applicant can show that he or she has a compelling reason to sell their property, or that he or she would be placed under an unreasonable burden in the next three years if they were unable to sell.
- Second, the panel must consider the circumstances surrounding applicants who are 'reluctant landlords'. This relates to applicants who can demonstrate that: (i) they had a compelling reason to sell at the time they moved out of the property to avoid or escape a situation of unreasonable burden; and (ii) letting the property can provide only temporary relief from this burden.

3.5 Determining recommendations

3.5.1 For each application, the panel's recommendation to the Secretary of State will be based on the majority view (i.e. at least two of the three panel members have agreed in respect of each criterion), and the overall application. The opinion of the Chair will carry no additional weight.

3.6 Making recommendations

3.6.1 The recommendations of the panel will be drafted by the NTS Secretariat after each meeting and cleared by the panel. Changes to the nature of the recommendation of any individual criterion or overall cannot be made after the meeting. Only the detail of the wording can be changed (i.e. in an editorial context). The final recommendation will be sent to officials at the DfT who will arrange for a decision to be made by one of a trained set of senior officials, on a rota basis. If escalation to the Secretary of State or minister with delegated authority is required (always following a review by a decision maker), officials at the DfT prepare a submission with input from the decision maker and put this to the Secretary of State or minister in correspondence.

- 3.6.2 Panel members are required to provide as much detail as is possible and appropriate when setting out the reasons for their recommendations. All recommendations to reject an application under a criterion where there is a lack of evidence as the reason, or part of the reason, for the rejection require as much detail as possible with respect to what evidence the panel would have expected or wanted to see. Where examples of the evidence/types of evidence would be applicable and appropriate, these should be listed.

Where the panel members do not all agree

- 3.6.3 A panel is not asked to reach unanimous agreement on any criterion or on an application overall. Where a panel member disagrees with the recommendation by the other two members on an individual application, that member may submit a separate report to the decision maker, giving reasons for their disagreement (a 'minority report'). This is optional only, and is not expected simply because all three members do not agree. This must be openly declared during the consideration of the case at the meeting and the reasoning and proposed wording presented to the other members and the Secretariat, in order that this is recorded as part of the recommendation note. It is not therefore possible to decide to submit a minority report after the meeting has ended.
- 3.6.4 The 'dissenting' member can edit this wording as part of the clearance process of the overall recommendations. The dissenting member should not change the nature of the report during the clearance process. For example, if only one reason for disagreeing with the majority of the panel was set out at the meeting, the member cannot add further arguments to their report afterwards.

Where one or more panel members recommend to apply discretion outside the criteria

- 3.6.5 In instances where the panel recommends rejecting an application because the applicant has not met all five criteria, but it is also felt by the panel members that the applicant has certain extenuating circumstances, those members (including if it is just one member) can ask that the Secretary of State accept the application overall. This must be fully articulated during the discussion of the case at the meeting and the nature of the report cannot be changed afterwards.
- 3.6.6 If all of a panel or the majority wish to make the case to the Secretary of State for an application to be accepted overall, this is reported as an 'extenuating circumstances report' in the recommendations note written up for the DfT by the Secretariat. If only one panel member wishes to make the case as above, this is presented as a minority report (as above) in the note to the DfT.
- 3.6.7 The Secretary of State is not bound to accept the recommendations made.
- 3.6.8 If the senior civil servant decision maker disagrees with the panel's overall recommendation to accept or refuse an application for any reason, a submission will be made to the Secretary of State or minister with delegated authority by the senior civil servant, setting out the panel's recommendation and their view on what the decision should be. Legal input would usually be sought by the senior civil servant on the case before a submission to the Secretary of State or minister is made.

Frequency of panel meetings

- 3.6.9 The Secretariat convenes meetings of the panel, the frequency of which shall be determined by the number of applications being received in any three-month period. Meetings will generally be held on Thursday afternoons, with preparation on the morning of that day, but there may need to be some flexibility on this, depending on the volume of applications. Where there are no applications to consider at a certain meeting, that meeting will be cancelled with as much advance notice as is possible.

Agreeing attendance at panel meetings

- 3.6.10 The Secretariat shall agree which members from the pool of panel members will attend which meeting, taking into account members' availability and ensuring, as far as possible, that meetings are evenly distributed between them. The aim will be to agree attendance at least two weeks before any meeting. The quorum must always be maintained.

Documentation, preparation for and follow-up from panel meetings

- 3.6.11 For data security reasons, no information relating to individuals or their applications must leave HS2 Ltd premises in hard copy. The only exception would be the transportation of files from HS2 Ltd premises to DfT premises by the NTS Secretariat. All preparation for panel meetings must take place in these premises and panel members cannot take anything away from the premises in relation to NTS applications, including agendas for the meeting. At HS2 Ltd offices, in advance of panel meetings, panel members will be able to review:
- a. their own copy of the summary reports of applications (template attached at Annex A) that will have been prepared by the NTS Secretariat, and on which the panel member will be able to make notes;
 - b. a copy of all evidence received from applicants (their application forms and supporting documentation);
 - c. any legal or technical advice sought by the NTS Secretariat to assist the panel in making its recommendation;
 - d. maps/drawings of the proposed route;
 - e. the guidance and application form;
 - f. panel guidance;
 - g. previous decision(s) and decision letter(s) in the case of a re-application; and
 - h. the agenda for the panel meeting (template attached at Annex B)
- 3.6.12 Panel members must use only the information contained in the case file that is given to them by the Secretariat in preparing for the meeting, and in the meeting. It is therefore asked that panel members do not use internet searches or other forms of background research to add information or understanding of information to the documentation provided as part of the case file.

- 3.6.13 The timing for a panel member’s preparation will be agreed beforehand and a room will be booked for panel members where the documentation can be reviewed. This is likely to take place on the morning of a panel meeting. Panel members should expect to arrange to spend a minimum of three hours reviewing cases, in a single slot. On exceptional occasions where there might only be a very small number of cases to be considered, a shorter period of preparation time may be suggested by the NTS Secretariat. Also, where the volume of cases is high - for example, over six cases - panel members should expect to spend longer reviewing cases in advance of the meeting. In exceptional circumstances it is possible that panel members could be asked to attend HS2 Ltd offices at some point during the days preceding the meeting, if panel member availability allows.
- 3.6.14 The NTS Secretariat will limit the maximum number of cases that could be considered in one day by a panel. The maximum that will be worked to is 8-10 cases, but this is highly dependent on the complexity of the cases and the amount of information submitted. The NTS Secretariat must agree with applicants in advance of the panel meeting that their case is going to the panel on a particular day. Therefore, once this is agreed with the applicants, there cannot be any negotiation with panel members on the number of cases for consideration. The decision on the number of cases will be made at the NTS Secretariat’s discretion after careful consideration of the time it expects that the panel will need to spend on the review and discussion of each case.
- 3.6.15 All material reviewed must be returned to the NTS Secretariat for safekeeping following each member’s preparation time. This will include the panel member’s own copy of the summary report with any notes they may have made on it. The panel members’ summary reports will be returned to them at the beginning of the panel meeting and all evidence received from applicants and the maps will be made available at the meeting.
- 3.6.16 A panel meeting cannot take place until each of the panel members are comfortable and have confirmed to the NTS Secretariat that they have reviewed and acknowledged the full contents of all of the case files to be reviewed at the meeting. This will also be confirmed by the Chair at the meeting. It is therefore possible that the start of a meeting may be delayed from the planned time in order to make sure that this is the case.
- 3.6.17 Following each panel meeting, the NTS Secretariat will draft the recommendations of the panel. Panel members will be asked to review the recommendations within a reasonable timeframe, usually a maximum of two days.

Security

- 3.6.18 If a panel member does not have a secure Government email address, the draft recommendations and summary forms containing their notes are password-protected before being sent by email. The panel members will have been made aware of the password at the panel meeting.
- 3.6.19 Any communications regarding recommendations should not be printed, downloaded, forwarded to other email addresses or saved onto any type of computer, media or communication device. The email address provided to the

NTS Secretariat for the purpose of receiving the documents for the review of the recommendations must belong solely to the panel member. Email addresses that are set up for the sending and receiving of emails for another individual in addition to or instead of the panel member cannot be used. This includes email addresses that are accessed by spouses, partners, children or other family members of the panel member.

- 3.6.20 Passwords to open documents sent must not be disclosed to any other person, including personal assistants, partners or family members; and must not at any time be left unattended or in the care of others.
- 3.6.21 Panel members' own copies of the summary report with any notes on it will be retained by the NTS Secretariat until the DfT's decision on the case is finalised. Following this, they will be destroyed as they will no longer be required. Copies of all other documentation in the case file will be made and retained by the NTS Secretariat, and originals will be returned to the applicant after a decision has been made on their application.
- 3.6.22 Where an information request is made by an applicant for the names of the individual panel members who made the recommendation or the decision maker who made the decision, we provide this information. This has happened on a very small number of occasions to date and we would always contact the individuals concerned in advance to confirm that we will do this. There is no benefit to an applicant in knowing the names of the panel members. There is no mechanism by which applicants would be able to contact panel members directly and we would not enable any communication between applicants and panel members. There should not be any direct communication between panel members and applicants in any circumstance. HS2 Ltd would act immediately to intervene in any communication in either direction to cease this and ensure that panel members are not exposed to any risks as a result.

Conflicts of interest

- 3.6.23 It is the responsibility of panel members to declare any actual or perceived conflicts of interests on a case-by-case basis at the beginning of each meeting. This will be facilitated by the Chair. Should such conflict of interest arise, handling of the application will be postponed to the next panel meeting and arrangements will be made to ensure the panel member with the conflict of interest does not evaluate that application. As soon as a panel member becomes aware of a conflict of interest - for example, on opening a case file during the preparation - this should be reported to the NTS Secretariat immediately.

Role of the Chair

- 3.6.24 The Chair at a panel meeting will be selected on a rota basis. As explained above, their view should not carry any additional weight to the two other members. The Chair has key responsibilities at each meeting, which are:
- a. to ask for confirmation from each panel member in turn and also give a statement in relation to themselves on whether:
 - the panel member has no conflict of interest in relation to any of the

applications on the agenda;

- the panel member has thoroughly read and acknowledges each and every page of the case file for each application on the agenda, and is comfortable that they have had enough time to do this; and
 - the panel member can therefore sign the declaration page of their notes in relation to each application.
- b. to ask the NTS Secretariat member in attendance whether there are any announcements or updates for the information of the panel;
- c. to be mindful of, and to take responsibility for, pausing the meeting at any point if there is doubt over the fact that individual panel members have read and acknowledged each and every page of an application. The Chair has the responsibility of ensuring a set of high-quality, robust and appropriate recommendations are provided at the end of the meeting. If any doubt over the acknowledgement, absorption or understanding of the material in an application arises for them or in relation to other panel members, the Chair must pause the meeting and time must be taken to fully rectify the situation, with assistance from the NTS Secretariat if required;
- d. to ensure that the recommendations recorded by the NTS Secretariat at the meeting (by way of the Secretariat interacting with the panel members to confirm the recommendations) comprise only of appropriate, respectful and suitable language;
- e. to ensure that the recommendations take full account of all of the information submitted by the applicant in the case file; and
- f. to ensure that the recommendations reflect an accurate acknowledgement of the information submitted by the applicant and do not contain factual errors.

Annexes

Annex A – Summary report template

Annex B – Panel meeting agenda template

Annex A – Summary report template

Case number:	
Initials:	
Address	
Date of application receipt	
Date of NTS panel meeting application is submitted to:	

NTS criteria	Applicability to applicant	Documentary evidence	Notes (for panel member)
Property type (HS2 Ltd summary)		•	
Location of property (HS2 Ltd description)		•	
Effort to sell and the impact of blight (HS2 Ltd summary)		•	
No prior knowledge (HS2 Ltd summary)		•	
Compelling reason to sell (applicant's own wording)		•	

OFFICIAL - SENSITIVE

Annex B – Panel meeting agenda template

HS2 Ltd

NTS Panel Meeting

Date:

Time:

Location:

Panel members:

1. (Chair)
- 2.
- 3.

Secretariat:

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Agenda

1. Chair’s standing items:
 - Confirmation of no conflict of interest
 - Assurance of preparation from all panel members
 - Any questions or concerns arising and AOB
2. Preliminaries/notices (NTS Secretariat)
3. NTS Applications:

Number	Name	Criteria

4. Confirmation of recommendations (NTS Secretariat)

Declaration

I confirm that I attended the panel meeting on [date]. I declare that I have no conflict of interest in relation to the above case(s) and I confirm I have read and acknowledged every page of the above case file(s):

Independent: Sign: Date:

Independent: Sign: Date:

Independent: Sign: Date:

