

## Draft Planning Memorandum - Planning Forum consolidated comments & HS2/DfT feedback (April 2014) –

Updated following April 2015 Planning Forum

### Key

<b>Item 'greyed out'</b>	HS2 Ltd / DfT comments are considered to be reasonable by authorities or if the item is no longer to be taken forward at Planning Forum.
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No.	Reference – (Nov. 2013)	Issue	HS2/DfT Response
1	General (South)	<p>a) Note: the general dissatisfaction with the tone of the Memorandum which appears to assume that Qualifying Authorities will hinder the approvals process, and more is required from the qualifying authorities than the nominated undertaker (best endeavours v reasonably practicable)</p> <p><b>March 2015: Local authorities were not satisfied with the response. Local authorities to look at specific examples and detailed wording for April 2015.</b></p> <p><b>April 2015: HS2 to provide reasoning on use of 'reasonably practicable.'</b></p>	<p>a) We do not accept the criticism of the general tone of the Planning Memorandum. We wish to emphasise that the Planning Memorandum cannot be looked at in isolation, and extracting individual sentences or phrases from it and looking them in isolation does not present a fair picture of the controls that are imposed on the nominated undertaker.</p> <p>The nominated undertaker in implementing the powers in the HS2 Bill will be subject to a wide range of controls and will need to obtain an extensive range of approvals. These include (but are not limited to):</p> <ul style="list-style-type: none"> <li>- General principles of the EMRs;</li> <li>- Environmental Memorandum;</li> <li>- Heritage Memorandum;</li> <li>- Adoption and implementation Code of Construction Practice;</li> <li>- Planning approvals that will be required under Schedule 16 to the HS2 Bill;</li> <li>- Highways approvals under Part 1 or 3 of Schedule 4 to the HS2 Bill;</li> <li>- The process relating to burials in Schedule 19 to the HS2 Bill;</li> <li>- Highways approvals under Schedule 31 of the HS2 Bill;</li> <li>- Utilities related approvals under Schedule 31 to the HS2 Bill;</li> <li>- Canal and river related approvals under Schedule 31 to the HS2 Bill;</li> <li>- Land drainage, flood defence, water resource and fisheries approvals under</li> </ul>

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			<p>Schedule 31 to the HS2 Bill;</p> <ul style="list-style-type: none"> <li>- Approval of works to listed building under the heritage agreement process that has been discussed at the Heritage Sub-Group;</li> <li>- Approval of works to scheduled monuments under a scheduled monument agreement;</li> <li>- Environmental permitting for discharges into watercourses during construction works under Part 1 of Schedule 2 to the HS2 Bill;</li> <li>- SS84 AND 85 New Roads and Street Works Act;</li> <li>- Seeking approvals under Section 61 of the Controls of Pollution Act; and</li> <li>- Licences under the Habitats Directives</li> </ul> <p>Given this wide range of effective and well tested controls, and the various approvals that are required, we do not accept that the controls imposed on the nominated undertaker are insufficient and that to suggest the overall environmental control processes are weighted against local authorities (and other relevant statutory bodies) is false.</p> <p>The purpose of the Planning Memorandum is to set out the measures and behaviours expected of planning authorities in the exercise of their functions under the planning regime, in exchange for the extra controls obtained by signing the Memorandum. It does not unreasonably fetter local authorities, rather it puts in place the measures needed to ensure that the planning process does not unduly hinder the timely and cost effective delivery of a project of national importance.</p>
2	para 1.1.2	b) Suggested wording change: It is binding upon any authority which has chosen to sign it so as to have the <b>additional</b> powers available to qualifying authorities....	b) <b>Agreed change. Incorporated in 3<sup>rd</sup> draft. Closed</b>

No.	Reference – (Nov. 2013)	Issue	HS2/DfT Response
3	para 1.1.1 (North)	<p>a) Note: the differences in the Introduction between the Draft HS2 Planning Memorandum and the Crossrail Planning Memorandum; notably that there was no reference to the Heritage Memorandum, mitigation or Environmental Management System.</p> <p>b) Include text '<i>The Nominated Undertaker is required to comply with the EMRs.</i>' list controls or reference where they are</p> <p><b>March 2015: Local authorities were not satisfied with the response, as repetition in certain circumstances may be appropriate. Planning Memorandum is the only EMRs to be signed by qualifying authorities, and repetition is important to reassure members of context of the document.</b></p>	<p>a) The Memo now includes an explanation as to how it relates to the other EMRs. Include General Principles in list. <b>Agreed change. April 2015: Revised text included in 3<sup>rd</sup> draft.</b></p> <p>b) It is not proposed to add text saying that the NU will be contractually bound to comply with the EMRs as this requirement is already stated in paragraph 1.1.4 of the General Principles. This states "Any nominated undertaker will be contractually bound to comply with the controls set out in the EMR...".</p> <p>Given the purpose of the Planning Memorandum and as the EMRs must be looked at as a set of documents which work in combination it is unnecessary to repeat controls from one document in another.</p> <p><b>April 2015: 3rd Draft - Text included at para 1.1.1 to clarify components of EMRs, and requirements on nominated undertaker.</b></p>
4	para 1.1.2 (South)	Reword 'unduly hinder the construction of HS2'	<b>Closed - April 2014.</b>
5	Section 2 (North)	<p>Consider the Aim of the Memorandum does not place sufficient onus on the role of nominated undertaker, particularly with regard to their role in the effective implementation of the system and ensuring good design. Example is 4.1.2 v 4.1.6 – take account of v have regard to.</p> <p><b>March 2015: As at Issue 1 above.</b></p>	See response to issue 1 above. The principle aim of the Planning Memorandum is to identify the commitments made by qualifying authorities to obtain the greater controls under the planning regime. It does not need to repeat commitments on the nominated undertaker made elsewhere in the EMRs.
6	para 3.1.2 (South)	Recognise that the 3m vertical LoD would not be suitable for stations, depots etc. and that individual authorities would likely petition on this point.	This is reflecting what is in the Bill in this regard, and it is not a Memorandum issue. <b>Closed - April 2014.</b>
7	para 4.1.2 (North and South)	<p>Acoustic sub-group?</p> <p>Some members of the Planning Forum noted that there should be an ecology sub-group</p>	As the Planning Forum ToR, recognise sub-groups can be established by the Planning Forum it is not proposed to amend the Planning Memorandum. <b>Closed - March 2015.</b>
8	para 4.1.2 (South)	Suggest rather than listing sub groups in the last line, text is changed to 'Where appropriate, statutory matters of relevance to the qualifying authorities will be referred to the relevant sub-group' or equivalent.	<b>Closed - April 2014.</b>

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9	para 4.1.3 (North)	<p>It was felt that the use of the word “consider” in the second sentence was too weak. It was felt that the Forum should “support” planning forum notes</p> <p><b>March 2015: Discussion on whether text is intended for Planning Forum notes to be prepared by the Forum, or considered by them in making decisions. HS2 Ltd to clarify wording in Crossrail Planning Memorandum and intention of this statement.</b></p>	<p>Amend Planning Memorandum to: ‘...the Forum will <del>settle</del><del>consider</del>–Planning Forum Notes...’</p> <p><b>April 2015: Crossrail Planning Memorandum does not have text on Planning Forum Notes. Proposed revision to replace ‘consider’ with ‘prepare’ to clarify the purpose of this para. Included in 3<sup>rd</sup> draft.</b></p>
10	para 4.1.4 (North)	<p>Does not need to state “remarkable and exceptional”</p> <p><b>March 2015: At request of Select Committee HS2 Ltd is considering revised wording to 4.1.4.</b></p>	<p>“remarkable” omitted. <b>Closed (north) - April 2014.</b></p> <p>South: standard designs would not be appropriate in locally specific circumstances.</p> <p>The exceptional circumstances test will take account of local circumstances. However, it is not proposed to amend the Planning Memorandum as this will be considered on a case by case basis with requests for approval.</p> <p><b>April 2015: Revised wording included in 3<sup>rd</sup> draft.</b></p>
11	para 4.1.4 (South)	<p>a) ‘Remarkable’ should be removed and ‘exceptional circumstances’ should be defined.</p> <p>b) Common design items should be changed to ‘generic’ design items.</p> <p><b>March 2015: At request of Select Committee HS2 Ltd is considering revised wording to 4.1.4.</b></p>	<p><b>a) Closed - April 2014.</b></p> <p>b) The dictionary definition of common and generic are set out below. Common seems to be the more appropriate word.</p> <p>Common - ‘Belonging equally to more than one’ (Johnson); possessed or shared alike by both or all (the persons or things in question).</p> <p>Generic - Characteristic of or relating to a class or type of objects, phenomena, etc.; applicable to a large group or class, or any member of it; not specific, general.</p>
12	para 4.1.5 (South)	<p>Guidance referred to in the last sentence should be clarified as Statutory Guidance if that is what it is</p>	<p>‘statutory’ included. <b>Closed - April 2014.</b></p>
13	para 4.1.6 (North)	<p>It was asked how decisions of the forum are arrived at.</p>	<p>Planning Forum ToR state ‘consensus’. Include at para. 4.1.1 ‘It is intended that the Planning Forum will act by consensus. ‘ <b>Closed March 2015 – changes accepted.</b></p>
14	para 5.1.1 (South)	<p>Waste, spoil and excavated materials – who deals with what should be clarified as often the upper tier authority is best placed to deal with large scale waste matters</p>	<p>Included. <b>Closed - April 2014.</b></p>
15	para 7.1.1 (North)	<p>Change “HS2 consents” to ‘HS2 Approvals’</p>	<p>Included “requests for approval” <b>Closed - April 2014.</b></p>

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16	para 7.1.1 (North)	1 <sup>st</sup> sentence add ...ensure that sufficient planning staff (and other <u>relevant</u> disciplines...”	Text included. <b>Closed - April 2014.</b>
17	para 7.2.1 (South)	1 <sup>st</sup> sentence should be removed or it should be made clear that it is the government’s view that it is a project of national importance	No change. This sentence provides context for expeditious handling of requests. <b>Closed.</b>
18	para 7.2.1 (North and South)	Not clear what “unreasonably stringent” means in second sentence	The meaning of unreasonably stringent is considered to be clear. The purpose of the sentence is to avoid unreasonably stringent requirements and therefore no change is required. <b>Closed March 2015 – clarification accepted.</b>
19	para 7.2.1 (South)	Nominated undertaker should have to justify what is an unreasonable cost	As the debate about what is reasonable when negotiating a submission is a two-way process, it is not appropriate to change the Planning Memorandum. <b>Closed March 2015 - clarification accepted.</b>
20	para 7.2.1 (North and South)	It is felt that the last sentence should also apply to the nominated undertaker	The requirement for the NU to comply with undertakings and assurance is set out elsewhere in the EMRs.  The reason this says conclusions of the Select Committee rather than undertakings and assurances is to ensure the decision of the Committee not to recommend a change to the scheme or the giving of an assurance is taken into account,i.e. the Schedule 16 process should not seek to reopen issues that were considered by the Select Committee. <b>Closed - March 2015 – clarification accepted.</b>
21	para 7.3.1 (North and South)	Last sentence – is “where appropriate” the correct phrase here?	Amend the Planning Memorandum to state: “Where practicable, the nominated undertaker will respond quickly to reasonable requests...” <b>Closed March 2015 – changes accepted. April 2015: Amendment included in 3<sup>rd</sup> draft.</b>
22	para 7.3.1 (North)	It was noted that the Statutory Guidance is likely to add further detail to this process	<b>Noted.</b>
23	para 7.3.1 (North)	Consider 'best endeavours' should be reworded to reasonable endeavours.	Comment added April 2015.
24	para 7.3.2 (North)	Consider 'best endeavours' should be reworded to reasonable endeavours.	Comment added April 2015.
25	para 7.4.1 (South)	Consider alternative wording to '...and/or the formation of a dedicated sub-committee.'	Comment added April 2015.
26	para 7.4.1 – 7.4.2 (South)	Consider there is no need for this paragraph 2 <sup>nd</sup> sentence is unnecessary 3 <sup>rd</sup> sentence is repetition	The reason for this para. is to ensure that appropriate mechanisms are in place to determine the requests for approval in a timely and efficient manner. The 2 <sup>nd</sup> sentence provides an example of where planning authorities may have to amend their powers of delegation to ensure that approvals are determined in a timely

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		<p><b>March 2015: Change agreed to 7.4.2. HS2 Ltd to clarify why points on 7.4.1 are closed.</b></p> <p><b>April 2015: Clarification provided.</b></p>	<p>manner. No change necessary. <b>Closed - April 2014.</b></p> <p>The 3<sup>rd</sup> sentence referred to is para. 7.4.2 [it was a single para. in Sept. 2013 version] Chris Wragg to consider alternative wording. Look at meaning of 7.4.2.</p> <p>Amend Planning Memorandum to:  ‘Where only part of a request can be determined within this timetable, the qualifying authority shall not seek unreasonably to delay determination of that part of the request. In consultation with the nominated undertaker the qualifying authority may grant approval for those aspects or subsidiary packages of works which they have been able to determine.’ <b>April 2015: Text included in 3<sup>rd</sup> draft.</b></p>
27	para 7.5.1 (North)	<p>Felt that this paragraph needs to be strengthened and the LPAs would consider some wording</p> <p><b>March 2015: HS2 Ltd to respond further on this, to provide reasoning on use of ‘reasonably practicable’.</b></p>	<p>Amend Planning Memorandum to: ‘To facilitate effective consultation and ensure requests for approval are determined within the timetable referred to above, the nominated undertaker shall, whenever reasonably practicable engage constructively in proportionate forward discussions about prospective requests with the qualifying authority and statutory consultees.’ <b>April 2015: Amended text included in 3<sup>rd</sup> draft.</b></p>
28	para 7.5.1 (North and South)	<p>‘whenever reasonably practicable’ should be removed.</p>	<p>Comment added April 2015. Hs2 Ltd provided legal view of the term ‘reasonably practicable.’</p>
29	para 7.5.1 (North)	<p>Should be expanded to say that the NU will also provide information</p>	<p>No change necessary. <b>Closed - April 2014.</b></p>
30	para.7.5.1 (South)	<p>‘..whenever reasonably practicable’ should be removed  Should include consultation with the other consultees not just statutory  Should include the requirement/need for the nominated undertaker to undertake up front discussions with qualifying authorities</p>	<p>As above. <b>Closed - April 2014.</b></p>

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31	para 7.5.2 (North)	Paragraph needs to be expanded and further explanation of what it seeks to achieve is needed	<p>It is not proposed to amend this paragraph. It contains a commitment that where reasonably necessary, for the proper consideration of a request, an indication or outline of the mitigation measures will be provided. It is not appropriate to extend this requirement to circumstances where it is not reasonably necessary.</p> <p>The requirement to provide an indication or outline of the mitigation will enable the qualifying authority to determine the submission with an understanding of how the effects of it will be mitigated. The bringing into use approval (required under paragraph 9 of Schedule 16) provides the qualifying authority with certainty that it will have to approve the details of the mitigation prior to the relevant scheduled work being brought into use. <b>Closed March 2015 - clarification accepted.</b></p>
32	para 7.5.2 (South)	Should include 'detailed mitigation' rather than 'an indication or outline'	As above. <b>Closed March 2015 - clarification accepted.</b>
33	para 7.5.3 (South)	No local authority will sign the Memorandum unless a 12 month programme is provided in advance, and a commitment is given to provide funding and resources.	Amend the Planning Memorandum to require the NU to provide a six month requests for approval look ahead which will be updated quarterly. <b>Closed - April 2014. Omitted in error from 3rd draft - change will be included in 4th draft.</b>
34	para 7.5.3 (North)	Welcome the commitment but think this should be more regular than every 6 months – quarterly would be better	As above. <b>Closed - April 2014.</b>
35	para 7.5.3 (South)	Should state that this is a 12 month programme updated quarterly.	As at 14 above. <b>Closed - April 2014.</b>
36	para 7.5.4 (South)	Revised wording from issues table to be included Upper tier authority should receive the detail of requests for approval made to lower tier authorities and vice versa	Included. <b>Closed - April 2014.</b> South: whether there is a commitment to engage with neighbouring authority.
37	para 7.6.1 (North)	More explanation needed about the mechanisms that would trigger this	Amend Planning Memorandum to delete paragraph as call in is not relevant to delays. <b>Closed March 2015 – changes accepted.</b>
38	para 7.6.2 (North)	Should make it clear that there will be warnings to local authorities first and that it would not happen out of the blue	Amend Planning Memorandum to add sentence to the end of paragraph: 'Prior to an authority being disqualified the nominated undertaker and the Secretary of State will discuss with the qualifying authority the concerns regarding its performance.' <b>Closed March 2015 - clarification accepted.</b>
39	para 7.6.2 (South)	The nominated undertaker should have an audit trail to justify the decision to de-qualify.	As at 33 above. <b>Closed - April 2014.</b>

No.	Reference – (Nov. 2013)	Issue	HS2/DfT Response
40	para 8.1.2 (South)	Should depots be included in the list of examples of structures where OSD might be constructed?	The sentences states ‘such as stations and vent shafts’ and does not exclude depots, however including ‘depots’ in this context is not considered appropriate given that no OSD is planned at proposed depot sites. <b>Closed - April 2014.</b>
41	Section 9 (South)	Assume Statutory Guidance will be included here	<b>Agreed change. Closed - April 2014.</b>
42	9.1.1 (South)	The nominated undertaker should be included (as the Qualifying Authority is)	No change. <b>Closed - April 2014.</b>
	10.1.3 (South)	Question as to who the ‘appropriate Ministers’ are.	Comment added April 2015. HS2 Ltd clarified that para 28 of Schedule 16 states that the appropriate Ministers means the Secretary of State for Communities and Local Government and the Secretary of State for transport, and in relation to the carrying out of any function, means those Ministers acting jointly.
	10.1.3 (South)	Question as to whether there could be a hearing in the appeals process rather than written representations.	Comment Added April 2015. HS2 Ltd clarified that para 25 (1) of Schedule 16 to the Bill states that ‘an appeal under paragraph 22 will be dealt with on the basis of written representations, unless the person deciding the appeal directs otherwise.’ This provision does not preclude a hearing in the appeals process, but it is for the person deciding the appeal to direct if one is required.