

Paragraph Number	Topic	Issue	What we are asking for	HS2Ltd/DfT Response
General	The imbalanced nature of the requirements on the LPAs as compared to the NU.	The use of best vs reasonable endeavours and the inequity of responsibility on HS2 vs Local authorities. The argument that there are a number of requirements in the Bill and associated documents that the NU needs to follow is in some ways irrelevant – the comments here are specifically in relation to the planning elements of the Bill and making it possible for the LPA to deliver on their stringent obligations.	In order to enable to LA to deliver on the timescales and other commitments that are being asked of them there should be a requirement that the NU does what it can to facilitate this. If there is no willingness to agree to this, where the NU does not fulfil its commitments this should be recognised in what is required of LAs and timescales etc adjusted accordingly (could be agreed tolerances).	<p>Suggest additional para 1.1.2 to state:</p> <p>The nominated undertaker will work with qualifying authorities to support the determination of requests for approval, in accordance with the obligations set out in this Memorandum.</p> <p>Specific points addressed below.</p>
4.1.4	Common design items to be considered by the Forum	The memo suggests that unless there are ‘particular local circumstances’ there will be a presumption in favour of the approval of such designs.	<p>More clarity is sought re how it will be established as to whether there are ‘particular local circumstances’ which would result in a ‘non-common’ design’.</p> <p>Suggestion that it should be agreed in formal discussions, highlighting the importance of pre-application discussions.</p> <p>Specific items we know won’t be common – such as viaducts stated as such for clarity.</p>	<p>A commitment to forward discussions is provided in para. 7.5.1.</p> <p>Discussions will involve local context and the appropriateness of the detailed design whether a ‘common’ design is proposed or not. Schedule 16 section 2, para (5) provides for qualifying authorities to refuse to approve plans and specifications on the ground that the design and external appearance of the building works ought to be modified to preserve the local environment or local amenity.</p> <p>‘Viaducts’ has been removed from the list of example common design items in the 3rd Draft.</p>
5.2.2	Conditions	<p>Included for reference. Comments on conditions are included as part of schedule 16 comments.</p> <p>Objection to the requirement for the NU to agree any conditions to approvals.</p>	Planning Memorandum needs to reflect anything that is agreed in relation to this.	<p>This paragraph does not mention agreeing conditions, but states that conditions may be applied.</p> <p>Noted that agreeing conditions will be subject to Schedule 16 discussion.</p>

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5.3	Class approval for Construction arrangements	Included for reference. Comments on the appropriateness of class approval separate to the planning memo – if changes agreed this may need to be updated.	Planning Memorandum needs to reflect anything that is agreed in relation to this.	Noted that class approval will be subject to Schedule 16 discussion.
5.4.1	Plans and specifications	Memo does not include detail as to when plans specifications will be provided.	It would be helpful for this to make reference to the appropriate part of the Bill.	Plans and specifications will be submitted to the planning authority for approval in accordance with Schedule 16 section 2. Agree reference to the relevant section of Schedule 16 should be included as it is for para's 5.3, 5.5 and 5.6.
5.5.1	Bringing into use	Included for reference. Comments on the works the bringing into use application should cover are included as part of schedule 16 comments.	Planning Memorandum needs to reflect anything that is agreed in relation to this.	Noted that bringing into use will be subject to Schedule 16 discussion.
5.6.1	Site restoration scheme	Included for reference. Comments on applications for site restoration are included as part of schedule 16 comments. Concerns about timeframes for these applications and for actual implementation of the works.	Planning Memorandum needs to reflect anything that is agreed in relation to this.	Noted that site restoration will be subject to Schedule 16 discussion.
7.1.1	Dedicated staff	LPAs are being asked to commit to ensuring that there are dedicated staff to deal with submissions come what may. There is no adjustment to this expectation even if the NU does not deliver on their commitments. In the ordinary course of events where the NU communicates effectively, engages in appropriate pre- applications discussions and provides an accurate forward plan it should be	Before the word “Resources” on the fourth line, insert the words “So far as reasonably practicable”. There should be an acceptance that this is dependent upon the NU facilitating this by sticking to its obligations.	Do not agree. The planning authorities who choose to sign the Planning Memorandum are committing to make sufficient resources available, and by doing so obtain additional powers under Schedule 16. In addition, the NU is committed to providing funding for the processing of requests for approval (see Information Paper C13), undertaking forward discussions, and to providing a forward programme. If the NU does not meet these commitments then in addition to not fulfilling a commitment to Parliament, the NU significantly increases the risk of delay to the construction programme.

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		possible for the LPA to plan accordingly (provided adequate funding is provided). The difficulty comes where this does not happen		Suggest in addition to new para. 1.1.2, addition to para. 7.6.2, final sentence – Prior to an authority being disqualified the nominated undertaker and the Secretary of State will discuss with the qualifying authority concerns regarding its performance and the performance of the nominated undertaker.
7.2.1	Unreasonably stringent	Not clear what “unreasonably stringent” means in second sentence	<p>Amend to give examples of what could be considered unreasonably stringent.</p> <p>There needs to be a commitment from the NU to stick to its obligations. If they do not then obligations could be considered to add to the cost or delay the programme in a way that they wouldn't if the NU committed to appropriate forward planning, pre-application discussions and consultation and engagement.</p>	<p>This was discussed at Planning Forum (March 2015) and was recorded as closed, as planning authorities agreed that the purpose of the statement is to avoid unreasonably stringent conditions being applied. Do not agree with amending para. to provide examples, as an exhaustive list is not appropriate nor possible, and the term should be understood for what it is.</p> <p>By way of explanation, according to the Oxford English Dictionary, <i>Unreasonably</i> is defined as ‘in a manner not guided by or based upon reason, good sense, or sound judgement’. <i>Stringent</i> is defined as ‘rigorous, strict, thoroughgoing; rigorously binding or coercive.’</p> <p>(As above) Suggest addition of para. 1.1.2 and to final sentence of 7.6.2 to address concern with NU obligations.</p>
7.2.1	Unreasonable cost	Nominated undertaker should have to justify what is an unreasonable cost	Onus to justify why something cannot be done should sit with the NU.	Agree that this would sit with the NU as a matter of course.
7.3.1	Timeframe for approvals	<p>Separate comments on timeframes as part of Schedule 16 comments. Objection to all requests for approval having an 8 week determination period.</p> <p>LPA's are being asked to commit to ensuring that requests for approvals are determined within 8 weeks. Notwithstanding the</p>	<p>Remove best endeavours. Replace with reasonable endeavours. Should also be commitment from NU to deliver on its obligations and recognition that if they don't this will be reflected in the obligations of the LPA.</p> <p>Should be firm commitment that NU will provide any information that is necessary in order for the LPA to determine the</p>	<p>Noted that timeframes will be subject to Schedule 16 discussion.</p> <p>Do not agree with removing ‘best endeavours’. See response to para. 7.1.1. with regard to obligations of qualifying authority and NU.</p> <p>It is proposed that the content of requests for approval submissions be the subject of a Planning</p>

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		<p>difficulties with this (see separate comments on timeframes as part of sched 16) as with the comments on dedicated staff (para 7.1.1) above, there is no adjustment to this expectation even if the NU does not deliver on their commitments. In the ordinary course of events where the NU communicates effectively, engages in appropriate pre-applications discussions and provides an accurate forward plan it should be possible for the LPA to plan accordingly (provided adequate funding is provided). The difficulty comes where this does not happen and expecting LPAs to commit to best endeavours in these circumstances could be severely damaging to the authority. In any event, best endeavours are considered too onerous a commitment.</p> <p>In addition, there is no firm commitment to provide any additional information if requested by the LPA which could cause difficulties in determining the request. If it is provided this is not reflected in the determination period.</p> <p>See also, general comments at the start of table.</p>	<p>application and the timing of when this is provided should be reflecting in the determination date.</p> <p>If new information is required the clock should be reset. Again highlights the importance of pre-application discussions</p>	<p>Forum Note (see para. 4.1.3 of the 3rd Draft Planning Memorandum).</p> <p>Information requested by the qualifying authority and provided by the NU would be relevant to the grounds for determination as set out in Schedule 16.</p> <p>Agree that if the content of requests for approval submissions, as set out in a Planning Forum Note (referred to above) is not provided, then an extended determination period will be agreed between the qualifying authority and the NU in accordance with Schedule 16 section 22, para. (4).</p> <p>Suggest that additional text is included in the Memorandum to this effect.</p>

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7.3.2	Additional details of a request	<p>Again, concern re the onerous nature of the term best endeavours.</p> <p>Concern that where the LPA specifies that the application should include additional details, the decision should be made within four weeks of the additional details submission date. This could in practice reduce the overall determination period if details were submitted in week 1 for example. In any event the additional details should be given the full determination period to allow for appropriate consultation and consideration.</p>	<p>Remove best endeavours. Replace with reasonable endeavours.</p> <p>See comments 7.1.1 and 7.3.1</p> <p>Removal of 4 weeks, should be 8 weeks after the additional details submission date. Unless those details are relatively minor and so the total determination time will be 8 weeks.</p>	<p>With regard to 'best endeavours' – response as above.</p> <p>To clarify that additional details which a planning authority may require, on approving a request for approval, referred to in Schedule 16 para's 2(3), 3(4), 7(4) are additional details required on approval, not additional details required to determine the approval itself.</p> <p>Agree that final sentence of para. 7.3.2 should be amended to state: '....and in any event within eight weeks after the additional details submission date.'</p>
7.3.4	Conditions	<p>Requirement to discuss conditions with the NU at least 7 days prior to determination date.</p> <p>Comments are made in relation to conditions as part of sched 16 comments.</p>	<p>Should be reviewed in light of discussions about the need to agree conditions as this was offered as a way to overcome HS2's concerns that the LPA would include ultra-vires conditions. Should be removed unless requirement to agree conditions is removed</p>	<p>Noted that agreeing conditions will be subject to Schedule 16 discussion.</p>
7.4.1			<p>After the word "ensure" on the second line insert the words "so far as reasonable practicable"</p>	<p>See response to 7.1.1 and 7.3.1 above.</p>
7.4.2	Part determination of applications	<p>Requirement that where only part of a request can be determined within timeframes it is. Not sure that we can part determine an application?</p>	<p>Clarity sought on how this would work in practice.</p> <p>Suggestion that request is made to NU to make a number of applications to enable split and phased determinations</p>	<p>It is possible to part determine a request for approval.</p> <p>Forward discussions will involve programme and phasing of requests for approval.</p>
7.5.1	Forward discussions	<p>HS2 reluctance to firmly commit to forward discussions</p>	<p>Removal of 'whenever reasonably practicable' so that there is a requirement for appropriate engagement in all circumstances.</p>	<p>Do not agree. The risk is on the NU if forward discussions do not take place. There is no statutory requirement to have pre-application discussions. Programme of submissions will be discussed with</p>

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		No commitment to forward discussions with non-statutory consultees.	Forward discussions should include non-statutory consultees such as the community (especially in light of SC interim report). The type of engagement should be discussed and agreed with LPAs.	each planning authority as part of forward discussions. It is also in the interest of the qualifying authority to have the obligation include 'whenever reasonably practicable.' Information Paper D1 Design Policy commits the NU to undertake community engagement in design development. The route wide approach will be set out in the coming months, and discussed at Planning Forum.
7.5.2	Mitigation measures	Requirement for the NU to provide an indication or outline of proposed mitigation measures (if any) which it intends to submit.	These should be discussed and agree with the LPA in advance. Please add words: the nominated undertaker as ag As there is no mechanism for pre commencement type conditions, if mitigation measures are to follow, the 8 week period should be suspended until complete submission of details reed in formal discussions with the LPA.	See response to 7.1.1 and 7.3.1.
7.5.3	Forward Plan of requests	NU to provide a quarterly forward plan of requests for approval. No commitments to interim updates if change significantly and no change to obligations of LPA if wildly different. Also timing of first plan will be important to allow adequate time for resource planning. Quarterly updates are at odds with the planning forum timetable –it would be better to have updates as they occur or quarterly, in line with the meeting schedule if there is no change.	Commitment to interim updates if significant changes. Obligations of LPA should reflect NU actions (could include tolerances). Seek commitment to provide first forward plan at least 6 months in advance of first application. Needs to tie in with securing commitment to fund adequate resources from NU. See also comments 9.2.1.	Agree that the NU will notify the relevant qualifying authority if there is a significant change to programme. Suggest text to this effect is included. See response to 7.1.1. It is in the NU's interest to provide forward programme early but do not agree with specific timeframe. Proposed additional para .1.1.2 provides general commitment to engage early. Suggest additional text at 7.5.3 to state that 'The NU will provide early information to Planning Forum on the programming of submissions, so far as information is available.' Funding commitments set out in Information Paper C13.
8.1.2	OSD	OSD - Will these only be considered after the HS2 works –	Memo to reference that some works may run concurrently.	Agree. Suggest 1st sentence ends, with full stop after 'vent shafts'.

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		may be necessary/ possible to complete some works concurrently – memo should reference this.		
9.2.1	Planning context report	Would be helpful for the planning memo to set out when LPAs can expect to receive the planning context report – schedule 16 only states that it needs to be submitted before the LPA has to consider an application – in theory this could be one day before. This would not assist with resource planning.	<p>See also 7.5.3</p> <p>It would be helpful to have this as soon as possible for resource planning purposes and in any event at least 6 months in advance of the first planning application.</p> <p>Discussions should begin asap to allow for effective resource planning.</p>	See response to 7.5.3 above.
10.1.2	Fees	Need idea of planning fees – need to be based on full recovery of costs especially given stringent obligations on LPAs.	<p>Fees needs to cover full cost of applications, including consultant costs when capability/ capacity not available in house.</p> <p>Discussions should begin asap to allow for effective resource planning.</p> <p>See also comments for 7.5.3 and 9.2.1</p>	<p>Position on funding set out in Information Paper C13. Fee regs will be put in place after Royal Assent. Content of Fee Regs will be discussed at Planning Forum. It is likely that these will be in line with current TCPA fees. A fee will not accompany a request for approval if officer time is being funded through the Service Level Agreement arrangements.</p> <p>See response to 7.5.3.</p>