

## Schedule 16 - Routewide petitioning points

### **Timeframes:**

*Clauses 19 to 23 and Schedule 16 of the Bill put in place an alternative regime for planning permission, overriding many of the controls ordinarily operated by your Petitioner as local planning authority. Your Petitioner is concerned that this process, supplemented by the Environmental Minimum Requirements, does not give your Petitioner as a local planning authority sufficient time to make proper decisions on what may be very significant items of development, including stations and depots. As such your Petitioner seeks a commitment from the Promoter that in respect of specified significant development proposals (including all stations and depots, and any proposals that will be subject to public consultation and consideration by your Petitioner's planning committee), the relevant determination period shall be 13 weeks.*

### **Response:**

1. The main proposed provisions of the planning regime set out in the Bill are explained in Information Paper B1, The Main Provisions of the Planning Regime. The Promoter considers that the planning regime set out in the Bill strikes a reasonable balance between ensuring that the Proposed Scheme is completed on time and to budget, and enabling local authorities to exercise controls over matters such as design and appearance of permanent above ground structures.
2. Clause 19 of the Bill will grant deemed planning permission for the works authorised by it. This deemed planning permission is subject to the conditions in Schedule 16 to the Bill which require certain approvals be obtained from the relevant planning authority. Schedule 16 does not seek to create an alternative regime for the granting of planning permission as planning permission for the relevant works will have been deemed at Royal Assent. Rather, Schedule 16 puts in place a process for the approval of certain details analogous to the discharge of a condition under the Town and Country Planning Act or a prior approval under Part 11 of the General Permitted Development Order. As the Petitioner will be approving certain details of development which has already planning permission rather than considering an application for planning permission, eight weeks is an appropriate determination period. It is important to note that requests for approval are not analogous to major planning applications as implied by the Petitioner.
3. Further to this the Draft Planning Memorandum, the requirements of which will apply should the Petitioner opt to become a 'Qualifying Authority' under Part 2 of Schedule 16, puts in place an obligation on the nominated undertaker to take certain actions to assist the Petitioner with the determination of requests for approval under Schedule 16. These include engaging in pre-submission consultation, providing a forward plan of requests, and assisting with consultation. With regard to the Petitioner's planning committee and consultation we note that in its role as a planning authority under the Town and Country Planning Act it determines planning applications in eight weeks including proposals subject to consultation and where appropriate consideration by its planning committee.
4. Sub-paragraph 12(5)(b) of Schedule 16 allows for the eight week determination period to be extended when agreed by the nominated undertaker and the Petitioner. Therefore, if there are circumstances which reasonably prevent the Petitioner making a determination in eight weeks then there is a process to extend the determination period.
5. The equivalent provisions of the Channel Tunnel Rail Link Act 1996 and the Crossrail Act 2008 both had determination period of eight weeks and these regimes operated effectively and resulted in the projects delivering high quality design. Therefore, given requests for approval under Schedule 16 are not analogous to major planning applications; are the approval of certain defined matters; that there are commitments in the Planning Memorandum to assist with the timely determination of submissions and there is a mechanism to extend the duration period the Promoter does not propose to amend the Bill.

**Conditions:**

*Your Petitioner notes that the planning regime set out in the Bill is very similar to that contained in both the Channel Tunnel Rail Link Act 1986 and the Crossrail Act 2007. However, there is one significant difference that causes your Petitioner considerable concern, namely sub-paragraph 2(7) of Schedule 16 to the Bill. That sub-paragraph says that the relevant planning authority may impose conditions on approval of detailed plans and specifications only with the agreement of the nominated undertaker. This tautological provision could render the planning authorities unable to impose conditions and should be struck from the Bill. Your Petitioner's concern applies to any other provision in the Bill in which authorities are given powers to impose conditions on other matters, only with the agreement of the nominated undertaker.*

**Response:**

1. The main proposed provisions of the planning regime set out in the Bill are explained in Information Paper B1, The Main Provisions of the Planning Regime. The Promoter considers that the planning regime set out in the Bill strikes a reasonable balance between ensuring that the Proposed Scheme is completed on time and to budget, and enabling local authorities to exercise controls over matters such as design and appearance of permanent above ground structures.

2. The Petitioner is correct that in the Crossrail Act 2008 there was not a requirement for conditions on the approval of plans and specifications to be agreed with the nominated undertaker. However, the Crossrail Act 2008 included an equivalent provision in sub-paragraph 7(5) of Schedule 7 to the Act (the Planning Conditions Schedule), which put in place the process for the approval of 'construction arrangements' including agreeing conditions. This provision did not in any way limit the planning authority controls as the grounds on which a planning authority could seek to impose a condition remained, as these were set out in the table in paragraph 7 of that Schedule. The purpose of the requirement was to avoid ultra vires or unreasonable conditions being imposed on the approvals. Had the nominated undertaker not agreed to a condition that was within the scope of Schedule 7 then the planning authority could have refused the request for approval. In no instance did a Crossrail planning authority refuse a request for approval because the nominated undertaker would not agree a condition.

3. The provision in sub-paragraph 2(7) of Schedule 16 to the Bill extends the provision that was in the Crossrail Act 2008 for 'construction arrangements' to plans and specifications approvals. This provision does not alter the grounds on which planning authorities may impose conditions, which are set out in sub-paragraph 2(5) of Schedule 16. As with the provision in the Crossrail Act the purpose is to avoid ultra vires or unreasonable conditions being imposed. If the Petitioner were to seek to impose a condition it considered reasonable and within the scope of the Schedule, and the nominated undertaker would not agree to it, then the Petitioner could refuse the request for approval.

4. The Promoter believes that the requirement to agree conditions will assist the effective operation of the planning regime established by Schedule 16 and that it does not restrict the planning authority controls as the grounds on which conditions can be imposed remain. Ultimately, the Petitioner can refuse a request for approval if it considers the nominated undertaker is not agreeing to conditions that are reasonable and within the scope of the Schedule. Therefore the Promoter does not propose to amend the Schedule.

5. The Promoter will also be bound by the controls set out in the Environmental Minimum Requirements, other Bill provisions and existing legislation that is not disapplied by the Bill. Further Information can be found in Information Paper E1 Control of Environmental Impacts.