

Draft General Principles & Environmental Memorandum (November 2013) Planning Forum consolidated comments & HS2/DfT response

Key

Item 'greyed out'

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.

No	Ref	Issue	HS2/DfT Response
		General Comments	
1	General	<p>How will the requirements be monitored and how will any breach of the EMRs be swiftly assessed and rectified? Repeatedly the documents say that the NU will be contractually obliged to comply but if they don't (inadvertently or otherwise) there is no mechanism (with a couple of exceptions) for the Authorities to instigate any sort of intervention or enforcement action. One exception appears to be the ability to take "normal" planning enforcement action in respect of breaches of the planning conditions but there needs to be some sort of independent mediation/complaints resolution contact that recognises the importance for residents/landowners as well as the project itself. Locking things up in contract disputes or protracted and slow planning enforcement action is in nobody's interest.</p> <p>Information Paper E1 should be updated where required.</p>	<p>The nominated undertaker (NU), in implementing the HS2 Bill, will be contractually bound to comply with the requirements of the EMRs, and other controls which include (but are not limited to):</p> <ul style="list-style-type: none"> - General principles of the EMRs; - Environmental Memorandum; - Heritage Memorandum; - Adoption and implementation Code of Construction Practice; - Planning approvals that will be required under Schedule 16 to the HS2 Bill; - Highways approvals under Part 1 or 3 of Schedule 4 to the HS2 Bill; - The process relating to burials in Schedule 19 to the HS2 Bill; - Highways approvals under Schedule 31 of the HS2 Bill; - Utilities related approvals under Schedule 31 to the HS2 Bill; - Canal and river related approvals under Schedule 31 to the HS2 Bill; - Land drainage, flood defence, water resource and fisheries approvals under Schedule 31 to the HS2 Bill; - Approval of works to listed building under the heritage agreement process that has been discussed at the Heritage Sub-Group; - Approval of works to scheduled monuments under a scheduled monument agreement; - Environmental permitting for discharges into watercourses during construction works under Part 1 of Schedule 2 to the HS2 Bill; - SS84 AND 85 New Roads and Street Works Act; - Seeking approvals under Section 61 of the Controls of Pollution Act; and - Licences under the Habitats Directives

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			<p>There are control mechanisms in place for these processes enforceable by planning authorities and statutory agencies. If a local authority believes that the NU is not complying with the EMRs then ultimately its recourse is to the Secretary of State, as the sponsoring government department, which can intervene if the NU is not meeting its obligations. This is set out in paragraph 3.1.11 of the General Principles.</p> <p>If an authority is not satisfied with the action taken by the Secretary of State and it feels that a commitment given to Parliament is being breached then the matter can be taken up with Parliament. While this process does differ from projects authorised by other means it is a proven method that has worked effectively on other previous projects.</p>
2	General	Additional costs that Local Authorities will face in dealing with complaints relating to the project will be considerable and this must be recognised and recompensed by HS2 (at least for qualifying Authorities).	While we recognise authorities concerns regarding costs it is not material to the consideration of the controls in the EMRs.
3	General	The requirements placed upon the NU are couched in far more flexible terms (e.g. ESA4.1 – general principles – para 1.1.5 – “reasonable endeavours” whereas the obligations in the Planning Memorandum are couched in more prescriptive terms and require “best endeavours”). This imbalance appears endemic in the drafting style and is has not been changed from previous discussions in this Forum. It is likely to be taken forward through the petitioning process to either lessen the burdens expected of local authorities or raise those required from the NU.	<p>The commitments made by the Secretary of State through the EMRs are significant and onerous. Furthermore they developed from EMRs that have been highly effective in controlling and reducing the environmental effects of previous projects. We do not accept this criticism. We wish to emphasise that the individual documents in the EMRs cannot be looked at in isolation, and extracting individual sentences or phrases from them and looking them in isolation does not present a fair picture of the controls that are imposed on the nominated undertaker (see response to item 1 above).</p> <p>The example of reasonable endeavours quoted in 1.1.5 should also been seen in context. 1.1.5 relates to reducing the effects reported in the ES on the Bill planning permission, which has been granted. The commitment relating to not exceeding them is more strongly worded. The commitment of HS2 to use reasonable endeavours to reduce the impacts reported at the time of the Bill should be recognised as the significant commitment it is.</p> <p>The drafting of Planning Memorandum and the obligations it places on qualifying authorities are considered appropriate given the qualifying authorities are obtaining significant additional control in exchange for committing to ensure the effective</p>

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			operation of the planning regime through the measures in the Planning Memorandum.
4	General	<p>Recognising that not every detail can be fixed at this stage too many of the requirements throughout all the documents (except the requirements placed on LPAs in the Planning Memorandum) are expressed in fairly meaningless terms such as “unreasonable” or “where appropriate”. These are clearly judgemental decisions but equally clearly there is no specification of whose judgement takes precedence or any dispute resolution mechanism. This is, in effect, a “get out of jail free” card for the NU.</p> <p>Authorities were not satisfied with the response from HS2 Ltd. HS2 Ltd advised that authorities should provide specific examples if they would like HS2 Ltd to respond on specific points of wording.</p>	We do not consider the comment justified. The EMRs form part of an extensive set of controls imposed on HS2 and summarised in HS2 Information Paper B1: Control of Environmental Impacts (see response to item 1 above).
General Principles			
5	1.1.3	How are cumulatives assessed i.e. if a number of EIAs are required in different areas along the line of route?	Any assessment of environmental effects would be undertaken in compliance with EU legislation and will be required to take account of cumulatives.
6	1.1.3	Bullet List: What is the difference between bullet 3 and 4?	<p>The third bullet refers to new effects (i) which in itself would be an Annex 1 scheme (ii) which would have positive rather than adverse effects.</p> <p>The fourth bullet refers to instances where the change will require a separate consent. In such instances the effects will be considered during that consenting process.</p>
7	3.1.8	If the impact is greater than identified in the ES the NU appears to have a choice here – minimise or eliminate the additional impacts OR report them. There is no indication of what reporting requires (how? to whom?) and as far as I can tell absolutely no requirement for the NU to do anything about minimising or eliminating the significant impact – this cannot be right. “Or” should be “and”. If the argument is that any exceeding of the adverse impacts identified in the ES takes things outside of the scope of what was approved by the Bill then this needs to be made clear and this whole para becomes superfluous.	<p>This is consistent with EU legislation in this regard as all reasonable steps will have been undertaken, and suggest revised wording to state:</p> <p>‘...the nominated undertaker will take all reasonable steps to minimise or eliminate those additional impacts, if despite these reasonable steps, significant adverse impacts remain the nominated undertaker will report them.’</p>
8	3.1.10	<p>Environmental Management System should be elaborated on here as it is in the Environmental Memorandum.</p> <p>Authorities were not satisfied with the response from HS2 Ltd. They suggested that the Environmental Management System should be in the General</p>	The commitment on the EMS in the General Principles is considered sufficient and it is not felt necessary to duplicate the more detailed requirements from the EM.

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		Principles and referenced in the Environmental Memorandum.	
		Environmental Memorandum	
9	1.1.1 & 1.3.1	Why are the Local Authorities not included in this work and party to the Memorandum as many matters are controlled/managed at local authority rather than national level? Authorities considered response to be reasonable following clarification on how Planning Forum feeds into National Environment Forum.	The Environmental Memorandum sets the framework for considering the environmental aspects of the design and construction of HS2 at a project-wide level with the responsible national agencies. This is not to say that local authorities do not have a role. Firstly, through the Planning Forum they are being consulted on the EM. Furthermore, through the range of approvals that will be required from the local authorities they will have the ultimate local control on many of these topics covered in the Environmental Memorandum.
10	1.3.4	Wording here is incredibly weak and ineffective compared with the “obligations” placed on LPAs in the Planning Memorandum. Authorities were not satisfied with the response from HS2 Ltd. It was suggested by authorities that section could be amended to include context on the other controls applicable.	The wording requires the NU and Forum members to take all reasonable steps to implement the aims of the memorandum. This is not considered weak or ineffective.
11	2.1.1	Last bullet: What exactly is this supposed to mean? It looks like a “get out of jail free” card in case of any challenge from the national environmental bodies?	The final bullet is appropriate given the importance of delivering a nationally significant project such as HS2. Also the bullet needs to be viewed in the context of the obligations in the rest of the Environmental Memorandum, the other sections of the EMRs and the other controls in place on the project (see response to item 1 above). When viewed in this context there is clearly not a ‘get out of jail free card’.
12	3.1.2	What is the co-ordinating role of the national Forum in relation to the submission under Planning Conditions? How does that sit with the role of the Planning Forum under the terms of the Planning Memorandum? Does the Chairman of this Forum or any other member of it represent us on the national Environmental Forum if there is to be a proper relationship between the two? (This is not really answered in section 3.3 despite its sub-heading).	Suggest deleting para. 3.1.2.
13	3.5.1	Bullet List: Who monitors and ensures compliance with these points and how are their costs recompensed?	The NU ensures compliance.
14	4.4.3	The wording suggests that this must go beyond the provisions included in the Bill. Has the land required for this been identified and included, or will there be powers to take land for these purposes?	It is not felt that the wording inherently goes beyond the Bill provisions. However, if that were the case then land and powers would be obtained through the normal processes by agreement with the relevant landowner.
15	4.6.2	Recognition of local distinctiveness in landscape and ecological character along the route is welcome and needs to apply to all elements (see contrast with para 4.1.4 of Planning Memorandum). However where trees are lost we would	The Environmental Memorandum gives commitment to managing newly created habitats for an appropriate period to ensure the objectives. The metric identifies the broad objective for each parcel of land within Bill limits. Where the objective is

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		<p>normally expect replacement planting to be on a greater than 1 to 1 basis and planted at an appropriate size rather than the smallest specimens that will take many years to become established and have any presence. The requirement is silent on size and numbers. It also fails to reflect the Government's own commitment to biodiversity offsetting (see also 4.8.2 on this point)</p> <p>Authorities considered response to first paragraph to be reasonable.</p>	<p>'good' condition this will be the objective of the habitat creation. The details of the monitoring and management regime to achieve this objective will be developed as the project evolves. If it becomes clear that an objective of 'good' condition cannot be achieved for any reason, then this would be taken into account in future reviews of the no net loss calculation.</p> <p>Defra agreed that the HS2 offsetting metric was consistent with the early findings from the offsetting pilot projects. Offsetting is in its infancy in the UK, and given the long-term nature of habitat creation projects, it is likely to be many years before significant lessons can be learnt. Hence HS2 believes it is unlikely that there would be benefit in reviewing its metric on the short timescale envisaged for the review of the Defra metric.</p> <p>The metric has not been used to determine mitigation and compensation measures. The approach used is set out in an appendix to the Environmental Statement (Ecological Principles of Mitigation in Volume 5 Appendix, SMR Addendum Section 9: CT-001-000/2). There are no hard and fast ratios for habitat creation; rather the approach relies heavily on professional judgement.</p>
16	4.7.2	Where does this get determined and who decides on the appropriateness and extent of replacement facilities? Have these been allowed for in the land-take included in the Bill?	<p>It will be the NU who propose the extent of mitigation. Should a local authority feel that the NU is not providing an appropriate degree of mitigation it would take this up with the NU, explaining it does not feel it is meeting the requirements of the Environmental Memorandum. The General Principles set out the binding commitments on the NU to provide appropriate mitigation..</p> <p>In some instances land has been included in limits for the purpose of such mitigation.</p>
17	4.8.1	Shouldn't the Local Authorities have a role in whether there has been any net loss in biodiversity?	As Natural England is the national body dealing with biodiversity it is appropriate that it works in conjunction with HS2 on calculation of no net loss. Where any such mitigation requires planning approval this will be obtained under Schedule 16. Qualifying authorities will also have the controls provided by the bringing into use approval.
18	4.10	<p>Omissions:</p> <ul style="list-style-type: none"> Local lead Flood Authorities should be consulted/involved. New culverts should be expressly the last resort and avoided 	See Part 5 of Schedule 31 to the Bill – Protective Provision on Land Drainage, flood Defence, Water Resources and Fisheries. [EA agree that these are not omissions]

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		<ul style="list-style-type: none"> Local drainage systems (ditches and streams) need more exploration There needs to be a commitment to the future maintenance and costs of maintenance of SUDS facilities <p> Authorities to consider Schedule 31 and Flood Information Paper E4. Forthcoming HS2 meetings with Environment Agency and Local Lead Food Authorities may also provide some clarity on issue </p>	
19	5	Noted that Table 5.1 is to come.	Table 5.1 to be shared with Subgroup when produced.