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Dear Sir/Madam

**Re: Modernising the Planning System: Development Management Consultation**

Thank you for the opportunity to comment on this consultation. Network Rail welcomes the opportunity to be involved and is generally supportive of the proposals. We have responded only where we consider appropriate.

The proposed Development Management Regulations propose significant changes to the current development control system. Many of these proposed changes will impact on Network Rail's operations. The changes must be considered in the context of the need to operate a safe and efficient railway, the level of regulation already affecting our operation and funding and delivery mechanisms. Some of the proposed changes will be positive. However others will have an adverse impact on the efficient delivery of rail projects. The proposed introduction of pre-application consultation, design and access statements, alterations to the neighbour notification process and timescales for commencing development will have the most impact on Network Rail's operations.

**Q1: Do you agree with the proposed categories of development to which the requirement for pre-application consultation apply?**

The Draft Regulations suggest that pre-application consultation with local communities should be required for all national, major and some local development. First, most national, and many major, developments proposed by Network Rail will also be subject to approvals under the Transport and Works Act. It will be important to ensure there is no unnecessary duplication of consultation. Second, in relation to local developments to be the subject of pre-application consultation we would suggest that the description of category 4 developments (open space) must be clarified. In this case the phrase 'land identified in the development plan' is used. We presume the intention is for this category to apply to a land use 'zonings' of open space. If so this should be made clear to avoid confusion with secondary policies which refer to and attempt to safeguard land, often covered by a land use zoning

other than open space, for example for nature conservation or landscape value or where land in another 'zoning' includes elements of open space.

**Q4: Is 21 days a reasonable period for authorities to respond to a pre-application screening notice in all circumstances?**

A 14 day response period would be adequate and bears comparison with the requirement for a statutory consultee to respond within 14 days under Regulation 30. The response period must also be seen in the context of a number of new provisions which will extend the wider application process and which will impact on Network Rail's ability to deliver projects efficiently.

**Q7: Do you agree with the minimum statutory requirements for pre-application consultation in regulation 8?**

**This sentence is unclear to me-** The minimum statutory requirements are adequate. However it is critical that the further guidance on what additional consultation could be carried out, and with whom, is issued as soon as possible and consideration given to depending on this rather the provision for the planning authority to advise of further consultation within 21 days. This would remove uncertainty and the potential for delay.

**Q8: Do you agree with the requirements on the content of pre-application reports?**

Where pre-application consultation has been undertaken, Network Rail would be required to submit a pre-application consultation report with the planning application. This would to some extent be repetitive of information provided at screening stage and in submitting the 'proposal of application notice'. However of more concern is the need to provide evidence of consultation and an account of representations made and action taken on it.. This will have significant resource implications for major applications and introduces many areas of uncertainty. For example, how will the planning authority expect representations made at a public meeting to be recorded? This and other such uncertainties must be clarified as the planning authority has the power to decline to determine if it does not consider pre-application consultation requirements have been complied with.

**Q9: Do you support the classes of development which will be subject to pre-determination hearings?**

The introduction of pre-determination hearings formalises existing good practice adopted by some local authorities. However, we are concerned that no definition is provided of 'developments significantly contrary to the development plan'. Experience has shown the uncertainty generated by use of similar terminology in other regulations and would recommend that guidance is issued to make this part of the process less subjective.

**Q10: Should the opportunity to be heard at a pre-determination hearing be extended to other parties beyond those who made representations?**

We consider that it should not be open to the council to invite parties that may not have participated in the application process to participate in the hearing given the increased number of opportunities proposed to be involved.

**Q12: Do you support the view that processing agreements should be in place before submission of the application?**

We support the concept of processing agreements as introducing a greater degree of certainty into the process. However this concept is devalued by not being a statutory requirement. Reverting to default timeframes where no agreement is reached gives little incentive to the applicant to agree a longer time frame. Where the agreement is breached there does not appear to be any recourse to challenge the position, other than through an appeal against non-determination although the ability to do so will be affected by any agreement previously reached. The introduction of processing agreements effectively nullifies the opportunity to appeal against non-determination.

**Q15: Do you agree that the sole parties signing the processing agreement should be the planning authority and the applicant, or do you think there is scope for statutory consultees to also sign the agreement?**

We believe there would be advantages if all parties critical to the determination of an application were signatories to a processing agreement, which had a statutory basis. For the statutory consultee this would also ensure a reasonable time in which to consider the application and presumably provision of appropriate information to be able to do that.

**Q27: Do you consider the proposals on service of notice to neighbours to be appropriate?**

The Draft Regulations do not detail how the transfer of responsibility to notify neighbours to planning authorities will be managed or resourced. The changes to the definition of neighbouring land significantly increases the number of neighbours that will need to be notified. This will place a significant burden on the local authorities. There is concern that this may result in the applicant still having to identify which neighbours should be notified, with the planning authority simply serving the notice. If so, in combination with the increase in the extent of notification this will have significant resource implications for the applicant. In addition the Draft Regulations outline that first or second class post will be appropriate for posting neighbour notification. Without sending neighbour notification recorded delivery, there is no proof that Neighbour Notification has been served, continuing one of the biggest failures of the existing system.

**Q30. Do you support the proposed definition of neighbouring land?**

The proposed alteration to the definition to neighbouring land will significantly increase the number of neighbours that will need to be notified. The changes to the description of development land will impact on whoever is involved in carrying out neighbour notification. Clearly responsibility will lie with Planning Authorities and this will have resource implications for them. However, until further details of exactly how the process will be managed it is not possible to rule out a resource implication for applicants.

**Q32: Do respondents support the proposed requirements on notifying owners and agricultural tenants and the placing of local advertisements in this record?**

The Draft Regulations on notifying owners and agricultural tenants could lead to confusion for owners and agricultural tenants as they will receive two notifications. We can see no reason why this should be done twice and recommend it is carried out only once and by the local authority.

**Q35: Do respondents have any views on the list of statutory consultees and the criteria for consultation?**

Regulation 30 sets out the statutory requirements for consultation on planning applications. This includes consultation with the British Railway Board (now Network Rail) or other railway undertakers likely to be affected where the development is likely to result in a material increase in the volume or a material change in the character of traffic using the level crossing over a railway. Whilst this provides Network Rail with an opportunity to be consulted on certain applications, there are many other circumstances where developments adjacent to, or even at some distance from the railway, could have an adverse impact on it. With the exception of the above situation relating to level crossings, Network Rail is currently reliant on being neighbour notified or on informal consultation in order to monitor, and if necessary, influence development proposals. As our interest in development proposals stems from a need to ensure the safe and efficient operation of the national rail network we believe there is a strong case for Network Rail to have a wider scope as a statutory consultee. We note the circumstances under which the Scottish Ministers must be consulted in respect of trunk roads and consider that a similar principle should apply in the case of Network Rail as the owner and operator of the rail network. We are involved in discussion with the Scottish Government on the appropriate extent of that.

**Q36: Do respondents consider it appropriate to extend the statutory period for determining an application for national and major development to 4 months?**

We consider that the extension of the statutory period for determining national and major developments is acceptable, given the scale and complexity of these schemes. This will also introduce certainty into the timescale for determination of such applications.

**Q38: How should planning authorities best manage the potential burden of ensuring those who made representations are advised of the decision?**

The Draft Regulations introduce a requirement that planning authorities should send a copy of the decision notice to those who submitted representations on the application. We consider that this will place another burden on local authorities and would encourage people to object purely to be kept informed of the progression of the application and to receive a copy of the decision notice. Instead of individually notifying each person who submitted representations, we would suggest that the decision on national and major applications could be advertised in a local paper. Currently, application decisions are available on the planning register and on websites for some planning authority areas. This should be sufficient for objectors to be kept informed of the decision.

If you have any questions regarding this submission please contact Dave Boyce Public Affairs Manager on 0141 555 4107.

I hope these comments are useful.

Yours sincerely

Ron McAulay  
Director, Scotland