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Dear Mr Cruickshank

Re: Scotland's Transport - Proposals for a new approach to delivering public transport infrastructure developments

Thank you for inviting Network Rail's comments on the above consultation for a new approach to deliver public transport infrastructure.

Although, we welcome the proposed introduction of a mechanism that facilitates faster consideration for transport infrastructure works any change must ensure that there are processes in place to protect the operational interests of potentially effected parties. These should include a sufficient consultation process, preserved right of objection to protect operational interests and if appropriate consideration by an independent party.

Here are our comments in response to the questions asked by the consultation including where considered appropriate additional comments:

Paragraph:

4.9 Q1 Are there any other transport works beyond rail, tram, guided busways and inland waterway developments that should be within scope and if so why?

No additions are suggested. It is however, assumed that the scope of works will be defined so that ancillary works e.g. provision of an access road to a station are covered.

4.12 Since the nature and extent of publicity appear to be procedural matters on which an application for an Order may fall then it is essential that specific guidelines and advice is provided on the minimum standard.

4.13 Although, some guidance on who should be advised is given at this paragraph. We recommend that consideration should be given to using existing (or proposed) procedures such as those for planning neighbour notification rather than introduce another type of procedure. We strongly believe that it is in everyone's interest that the relevant statutory undertaker for the type of proposal is consulted formally.

4.16 **Q2 What reasons exist for lengthening or indeed shortening the 6 month minimum designated statutory pre-application period between the promoter publicising initial proposals and presenting an application for an Order to the Scottish Ministers?**

Consideration should be given to reducing the timescale for relatively simple or small projects. These should ideally be defined in advance or alternatively a procedure put in place to apply for permission to reduce the standard timescale. In any case we consider that maximum period for pre-application consultations should follow the timescale for response, of twelve weeks, set out in the Planning Bill. However, thereafter there should be an additional time period to enable the promoter to resolve issues raised during the consultation process prior to application for the Order.

4.19 **Q3 What process should apply to enable a promoter, without a statutory right, to enter land to conduct preliminary investigations?**

In principle the need to secure approval to enter land for preliminary investigations should not be constrained by a lengthy process. However, in the interest of safety and to ensure the operational reliability of the railway it is unacceptable for the promoter to access operational railway without the statutory undertaker's permission. It is essential that only properly qualified people with the correct safety qualifications access the operational railway. Access of operational railway land by unqualified people is an unacceptable safety risk.

Any applications for certificates, and subsequent appeals, should be kept to strict timescales. Consideration should be given to including this approval process as part of the promotion and consideration of the order. Safeguards such as having the relevant insurance, an obligation to make good any damage and compensation for loss or damage would have to be in place.

4.22 **Q4 What documentation should be supplied by the promoter in support of the application? Is there sufficient information contained within the proposals?**

The list appears quite comprehensive but should be converted into a precise set of rules which can be used administratively to determine the validity or otherwise of the application as is the case in England. It should also be made

clear whether the promoter's application should include copies of consultation comments and the promoter's responses to them. Additionally, it needs to be clarified whether or not the 'environmental statement' referred to is a formal Assessment under the regulations, where they apply, or a requirement on all proposals.

- 4.23 Although the procedure is intended to deem outline planning consent it also requires the provision and consideration of detailed information (for example to enable assessment of building accessibility). Given also that the proposal will be subject to extensive notification and consultation and will be scrutinised by a Reporter during the Examination stage consideration should be given to using the process to deem or dis-apply other consents in some or all cases.

4.25 Q5 What are the implications of reducing the time period for objections from 60 to 42 days?

Given the inference that the pre-consultation process should be extensive and lengthy there may be some merit in considering reducing the subsequent time period for objection. The 42-day period appears to be sufficient under the Transport & Works Act. We do however; have a concern here in that from our experience we have found it necessary to object in a number of instances purely because of the time involved in negotiating the removal of our objections with the promoter.

- 4.27 The schematic of the proposed process and the descriptions of Step 1 Application and Step 3 Initial Ministerial Decision suggest some overlap and the potential for delay. The assessment at both stages appears to be related to whether documentation and procedures are in order. In addition there would appear to be the potential for these assessments to be administrative as under the system in England and Wales.

- 4.29 It may not be appropriate to include the public interest as a specific criterion at this stage. It should be for the promoter through the public examination to show that the weight of public interest is greater than the private interest of the objector.

- 4.31 In order to be able to assess compliance with other statutory requirements for development, such as those given as examples – accessible buildings, detailed proposals will be required. Again we would suggest that this could permit the order to deem full planning consent in certain cases. Such consent could be subject to conditions.

- 4.40 Q6 Are there any reasons why, once the Scottish Ministers have determined that the application meets the procedural conditions and the specified criteria conditions, that the application should be considered**

by the Scottish Parliament prior to a public examination of the objections?

For the Scottish Ministers to seek the approval of the Parliament to proceed would cause duplication and delay. We would suggest that only proposals which have not been considered in the context of the National Planning Framework should be referred to the Parliament which would have a remit for considering only whether or not the scheme was, in principle, in the public interest. If it is considered that there should be referral to Parliament of all applications we believe this should be included early in the process.

4.41 The procedures in this and subsequent paragraphs, relating to the Examination, suggest that this would be a detailed consideration of the proposals. That would support our view that in certain cases the process could be used to consider detailed proposals and to deem full planning consent.

4.49 The ability of the Ministers to seek further information or advice negates the purpose of the public inquiry. As in England and Wales only if there is new information or a change in policy between the end of the inquiry and the Ministers making a decision should the parties be asked for further comments?

5.3 Q7 Are there any reasons for extending Parliamentary consideration and approval of projects beyond those contained within the NPF? Do you agree that it should also be possible for the Scottish Ministers to designate other transport related projects not in the NPF for Parliamentary consideration should they see fit?

As stated above there may be a case for consideration of proposals of national significance but which have not been developed on a timescale which allows for inclusion in the National Planning Framework. There may need to be other procedures put in place to ensure the accountability of Ministers.

I hope our comments are helpful and should you require any clarification please do not hesitate to contact me or my Public Affairs Manager, Dave Boyce (Tel No. 0141 555 4107/E-mail david.boyce@networkrail.co.uk)

Yours sincerely

Ron McAulay
Director