

**Statutory consultation on proposed changes to Network Rail's network licence
- Responses - Published 19 March 2019**

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Midlands Connect's response

Amended Licence for Network Rail (deadline 31st January)

<http://orr.gov.uk/rail/consultations/pr18-consultations/statutory-consultation-on-proposed-changes-to-network-rails-network-licence>

Background to Midlands Connect

- Midlands Connect is the Sub-National Transport Body for the Midlands. We are solely funded by Government and constitute a partnership of national and local bodies, including local authorities, local enterprise partnerships, chambers of commerce and our two international airports. You can find out more why we think the Midlands needs a fundamental shift in how major infrastructure investment is planned and delivered in 'Our Routes to Growth'¹.
- Our partnership's role is not only to research, develop and recommend new routes to growth, it is also to hold national bodies to account to ensure the benefits we all want for businesses, residents and visitors are brought to fruition.
- We published our landmark transport strategy in March 2017 and have been developing flagship policies like the Midlands Rail Hub which will add improved capacity and journey times as far as Hereford and Lincoln, but crucially add £649m GVA per annum to the Midlands and UK economies.
- Sub-National Transport Bodies provide a unique regional perspective to transport planning, promoting a positive future for our economy, with rail improvements as a means as much as an ends. With four of the UK's five main freight lines running through the Midlands carrying 42% UK freight, delivering our Midlands Rail Hub plans could put an additional £22 billion of freight onto our railways every year.
- Midlands Connect welcome the ORR's three consultations on the Network Licence, Stakeholder Engagement and Holding to Account – our responses aim to cross-reference to each follow the same vision.
- We particularly welcome ORR's engagement in 2018/19 and look forward to continuing our engagement with partners and business/public stakeholders. ORR have already made the welcome statement that "our vision for CP6 that, over time, customers and other stakeholders can and should play a much more significant role in working closely with Network Rail to agree priorities and challenge performance."² Our responses aim to be constructive in helping ORR and the rail sector achieve this aim.

¹ <https://www.midlandsconnect.uk/publications/our-routes-to-growth-july-2018/>

² http://orr.gov.uk/_data/assets/pdf_file/0003/39306/pr18-final-determination-draft-network-licence-consultation-response.pdf

Recommendations:

There remains a recurring assumption that Network Rail can solve all its own problems, so we make the following specific recommendations for ORR to enable greater collaboration and resilience into future network planning:

- a. That a **single definition of ‘stakeholder’ be used throughout the Network Rail Licence** – rather than using a narrower definition under Part B on ‘management responsibilities’, which is precisely where external input can add value³.
- b. That its **guidance be reiterated alongside the Network Rail Licence of the types of bodies it expects to be included, but not restricted to**⁴.
- c. We **do not support the proposal that Network Rail move to self-assess its performance**⁵ – if stakeholder engagement is really one of three top objectives, it is counter-intuitive that its monitoring be internalised at any point.
- d. **Each Route Supervisory Board should have local representation from all areas it covers as the ‘default’ option** – TfN sit on the North of England Board however there are other Network Rail boards where TfN is not represented, for instance London North Eastern and East Midlands (LNE&EM) and London North Western (LNW) boards, whilst Midlands Connect supports the expectation that WMRE and TfEM sit on these respective boards.
- e. **Each Route Supervisory Board should ensure its consults more widely on its Annual Business Plans** – with Sub-National Transport Bodies expected to offer constructive ideas and solutions to support long term economic growth.
- f. Remain **concerned that there are gaps between Network Rail’s annual business planning processes and the opportunities for future rail investment**, through DfT’s Rail Network Enhancement Pipeline – a lack of transparency on the forward look of investment will ultimately limit external ideas, miss opportunities for aligning investment and hinder Network Rail’s business planning efforts.
- g. Likewise, **DfT should consult all STBs on rail proposals in our respective areas, at each stage of the new rail enhancements pipeline (RNEP)** – which would enable Sub-National Transport Bodies to offer the joined-up vision for improving passenger and freight outcomes in our areas.

We have made these representations clear in response to the specific consultations and would be happy to discuss them with you. We would like an update on your view of these suggestions before any announcements are made on finalising the Network Rail Licence for Control Period 6.

³ Amend Part B paragraphs 5.2a, 6.2a and 7.2a

http://orr.gov.uk/_data/assets/pdf_file/0018/40059/statutory-notice-to-modify-network-rails-network-licence-2018-12-20.pdf

⁴ See paragraph 5.8 http://orr.gov.uk/_data/assets/pdf_file/0003/39306/pr18-final-determination-draft-network-licence-consultation-response.pdf

⁵ Paragraph 5.4 infers that ORR will move away from evaluating NR’s ‘self-assessments’

<http://orr.gov.uk/rail/consultations/pr18-consultations/consultation-on-orrs-approach-to-assessing-the-quality-of-network-rails-stakeholder-engagement-in-cp6>

Detailed Comments

- Midlands Connect **WELCOMES** that ORR reiterate the three core obligations of NR in the amended Licence:
 - “general network management duty;
 - stakeholder engagement duty; and
 - passenger information duty.”

- Definition of stakeholder now broader to cover all:
 - “any person with which Network Rail has (now or in the future) a significant relationship;
 - any person who may be impacted by the activities of Network Rail; and
 - any person who has expressed a serious interest in providing railway services, facility or network.”
- Examples are included for clarity, but “not restricted to:
 - passengers, and their representative groups
 - freight customers
 - all operators (including passenger, freight, open access, charter and prospective operators)
 - line-side neighbours
 - current and potential and national and local funders
 - sub-national and statutory transport bodies, including (but not exhaustively) Transport for London, Transport for Wales and Transport for the North.”
- Satisfied as long as monitoring best practice ensures consistency (see separate consultation). General principles (including ‘effective’) logical based on incentive to provide “sufficient flexibility to tailor how NR engage with their different stakeholders to enable different and innovative approaches to develop over CP6.”

- **HOWEVER** it is not clear why having updated the definition of ‘stakeholder’ in Part II (para 1) and Part III (para 1.8), there remains a discrepancy with expectations under Part D on Industry Obligations, including specific obligations for the NR, its Routes and its System Operator to redefine which stakeholders are to be consulted (paras 5.2, 6.2 and 7.2). MC recognise this may be drafted as a minimum requirement but the difference between the two lists lead to confusion. It does not accord with the aim in the consultation to incentivise positive outcomes, including the ‘3 core obligations’. **Part D (paras 5.2, 6.2 and 7.2) should be removed or amended to refer back to the definition of ‘stakeholder’ in Part I paragraph 1.**

- To truly embed the incentive for engagement that ORR seek, we suggest ORR use the Government’s Behavioural Insights Unit’s EAST model, including setting out ‘default’ options that encourage objectives to be both adopted and surpassed. Without such safeguard, ORR will be drawn into constantly reviewing and judging how different routes have assessed their interaction, which is explicitly wants to avoid. **ORR should publish paragraph 5.8 as guidance to act as a ‘default’ list of ‘stakeholders’ it expects to be included but not restricted to, including “sub-national and statutory transport bodies”.**

- **ALSO** The reliance on NR self-assessments (proposed in a separate consultation) suggests the broadening of ‘stakeholder’ is actually a weakening of the expectation of NR and its component units. This will not aid NR in terms of planning a long term network, nor aid consistency between units where the baseline is set so low to not incentivise any further activity. MC request clarification in the Licence of how each unit is expected to engage stakeholders for their respective business planning obligations. A simple solution would be to mirror the Highways England Licence⁶ and include a **clear expectation for NR to collaborate in developing and delivering its programme.**
- **HOWEVER** On network management, “‘network wide’ planning will consist of:
 - planning which covers the short, medium and long term, to meet reasonably foreseeable future demand for railway services;
 - consulting railway service providers (including, as noted above, a new express reference to freight and passenger operators with services crossing route areas) and funders; and
 - preparation of network wide plans, including a ‘Delivery Plan’, with a new obligation to take into account the contents of route and SO plans and consult with routes and the SO.”
- Remains unclear from DfT, how input and visibility of future enhancements through RNEP can be effectively be accounted for under the SO obligation:

“One of the main functions of the SO is to provide a long-term planning function for the network (here including stations and light maintenance depots as above). The licence defines the long-term planning objective as the “effective and efficient use and development of the capacity available on the network, consistent with the funding that is, or may become, available during the period of the long term plans and with the licence”.”
- **ALSO** How can NR realistically fulfil its obligation without a long term understanding of potential RNEP outputs, their scale and timing? This is a major gap leading to a systematic risk of disjointed planning, programme and cost risk in efficiencies are not recognised, and also regular disruption with annual business plans expected to managed network wide change if/when DfT require work. DfT should urgently clarify how they and wider stakeholders can help NR promote and manage the challenges of a network with a pipeline of potential future enhancements.

⁶ See para 5.14 (j)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/431389/strategic-highways-licence.pdf



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31 January 2019

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Dear Sir/Madam,

Network Rail Licence

This letter sets out TfL's response to the above consultation from December 2018 and focuses on cooperation with stakeholders and safety and standards. We are content for the response to be published.

Cooperation with the Mayor and TfL

It is wholly unreasonable that, despite our objections in our response to the Draft Determinations, ORR intends to remove Condition 8.4 from Network Rail's network licence. This condition requires Network Rail to cooperate with the Mayor of London and TfL. We are concerned that removing specific mention of TfL sends the wrong message to Network Rail. Instead we are asked to rely on a high-level, vague obligation owed to all stakeholders whether they are proposing a small commercial development next to the railway or a public authority charged with railway and other transport services and enhancements.

TfL funds and specifies services on Network Rail's infrastructure in a similar way to DfT, and our services will account for nearly 25 per cent of GB rail passenger journeys by the end of CP6. We are also a major third party funder of infrastructure enhancement.

DfT as an equivalent franchising and funding body has a range of tools at its disposal to ensure Network Rail behaves in the manner it desires. However, TfL's ability to influence how Network Rail responds to its priorities and aspirations for the relevant routes and related rail facilities is limited and largely rests on (1) Network Rail's co-operation and (2) tangential routes such as participating in ORR's industry reviews and consultations.

In view of TfL's expanded role and our profound dependence on Network Rail's cooperation, we believe Condition 8.4 should in fact be bolstered by imposing requirements to support TfL in delivering its objectives and where appropriate the Mayor of London's Transport Strategy. In our view those requirements should be drafted in suitably specific terms so that Network Rail's performance can be properly measured and in turn drive improvement in how it interacts with TfL.

We are concerned given the lack of specific inputs required from Network Rail under ORR's proposal, that in practice it will be difficult to establish Network Rail is in breach of the new Stakeholder Engagement obligation and complaints are unlikely save in the most extreme circumstances.

There are a small number of regional authorities that perform to some degree roles which are equivalent to TfL such as Transport for Greater Manchester, Transport for Wales and MerseyTravel. With further devolution of transport powers, the role of regional authorities will increase. A specific licence condition to work with these bodies and have due regard to their priorities and objectives is required.

If your position remains unchanged, then one option may be for ORR to issue or develop a more detailed statement that sits behind the Stakeholder Engagement Purpose which explains what is expected of Network Rail in its dealings with TfL and the bodies mentioned rather than leaving this to Network Rail. TfL would welcome an opportunity to input into any such work stream.

Safety and Standards

With respect to the proposed changes we would have no concerns where Network Rail remains a member of RSSB. There should be a consultation with key stakeholders should Network Rail ask ORR to allow it to leave RSSB. TfL's rail infrastructure bodies (RfL for ELL and RFLI for Crossrail) have adopted both Railway Group and Network Rail company standards as their own. This ensures a commonality of rail infrastructure standards across UK and promotes the ability of other UK organisations to undertake the role of Infrastructure Manager.

Should Network Rail leave RSSB and Railway Group standards no longer cover infrastructure, this would reduce the ability of other organisations to undertake this role, consequently reducing competition. In addition, there would be a considerable cost to TfL to keep the relevant rail standards current and / or develop its own standards. London Underground does not intend to become a member of RSSB as outlined in the application for the LU trains operating licence which was renewed last year. National Rail operators should comply with TfL standards where they operate over our infrastructure.

Yours faithfully

Rail Development Manager