OFFICE OF RAIL AND ROAD

Responses to PR23 Draft Determination consultation:

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PR23: draft determination

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]
Job title: [Redacted]
Organisation: Arriva UK Trains
Email*: [Redacted]
Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

Arriva UK Trains (AUKT) represents four train operating companies (TOC), Grand Central, Chiltern, Cross Country and Arriva Rail London (ARL). At AUKT we are broadly supportive of the draft determination, however each of our TOCs has differing or unique qualities such as Grand Central being Open Access or Cross Country operating within all of the regions and being aligned to the FNPO team that sits within System Operator. We will in this consultation raise a few points or comments where we would like to see further work or additional detail. For example we think is important that, whilst the various regions and routes within regions all have their own approach, priorities and targets, there is some consistency maintained across borders between the routes & regions – recognising that very few of Cross Country journeys are wholly contained within one route with the exception of Edinburgh to Glasgow & Aberdeen, and Bristol to Paignton / Penzance to Plymouth. Performance during CP6 has been unacceptable, so we welcome the ORR intervening on the performance targets proposed by NR. We believe passenger demand is a function of network performance and therefore seek challenging targets with regulatory scrutiny and challenge by the ORR.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

AUKT supports the ORR's decision to set a point target and be more challenging (in England and Wales) than that NR proposed, as well as the concerns voiced around a reduction in renewal volume and a subsequent uplift required in reactive & preventative maintenance on aging assets. With the constrained funding available we support the ORR recommendation that NR regions should prioritise investment to mitigate asset depreciation and improve network resilience including renewals, earthworks and vegetation management. At Cross Country we have experienced already a deterioration in vegetation management particularly across Western & Central routes and have recently written to the RMDs in light of this. We welcome ORRs recommendation that NR increases its renewals work bank from that proposed originally. The observation that 'value based management' is not compatible with an obligation to protect as far is as reasonably practicable is also one that XC recognises and supports, and would be interested in how would such a categorisation could be undertaken. At Cross Country we also support ORRs recommendation that £50m of Scotland's 'unallocated funds' should be directed to increase the volume of renewals undertaken – we are concerned that part of Scotland's mitigation for fewer renewals in an increase in operational constraints such as Speed Restrictions given the increase in on time performance targets. We welcome the inclusion of the £0.4bn PIIF and look forward to further details on how that money will be allocated across the network, building in expertise from TOCs working in partnership with Network Rail. We also welcome ORRs recommendation that NR increases the amount of money for risk, with Cross Country having experienced several major incidents including Carmont, Nuneham, Viaduct and the ongoing & major bank slippage at Little Hagloe on the Severn Estuary. These 'unforeseen' events are becoming more common and are likely to continue to do so in the light of our changing climate. We would welcome further investment in preventative as well as reactive funds for these events. In terms of the draft determination for System Operator, we also recognise the outstanding decision on the Industry Timetable Technology Strategy (ITTS) workstream and would observe that the scale of ambition outlined for this program, and also the Better Timetables for Passenger & Freight (BTPF), have not been met in CP6 for various reasons. Significant changes were planned for ITTS and could potentially have collaborated in the systems world of TOC & FOCs as well – with Digital signalling on the horizon it is surely appropriate to revisit the planning systems that support our timetable given the granularity of data available to plan with that will emerge with a move away from conventional signalling. It is however unclear what the scope of ITTS and BTPF now are, and how the proposed CAPEX of £56m would be spent. It is noted that are freight specific plans within the System Operator draft determination, however none apparent for National Passenger Operators – in connection with this, we welcome draft determination 5 and will work with NR to agree these targets (NOTE Draft decision 5: We require the SO to develop and include updated On Time and Cancellations forecasts for each NPO in its delivery plan for CP7.Within this, we require the SO to set out more detail on the impact of its actions on NPO stakeholders.). We specifically welcome recommendation 2.11 within System Operators determination that a return to Network Code Part D compliance must be in place by the December 2024 timetable production process – we remain open & willing to collaborate on further iterations of BTPF but fully endorse a return to Part D compliance. We question 2.14 within the System Operator determination as we had understood the 'Access Planning Program' to be related to engineering access (and systems such as PPS) rather than for access rights. We wish to specifically voice concern regarding the HLOS requirement for Scotland shown on page 28 of the System Operator draft determination to "3.4 Establish a Scotland-based timetable team to deliver all activity on the Scottish network". Whilst at Cross Country we would not have a concern in an independent Network Rail Scotland timetable team, so long as our national through journeys are still treated as such and the national governance, processes systems are still established & adhered to. We would question whether two separate teams essentially carry out the same activity would be as (or more) efficient that the current arrangements. We would be gravely concerned were a Scotland based team to be comprised of Network Rail and a TOC, given the obligation for independence and neutrality required in allocation of capacity.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

At AUKT with our four train operating companies covering a number of differing regions, we would like to see more consistency in NR's stakeholder engagement in the Regions as well as the System Operator.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

AUKT welcomes the proposed outcomes framework outlined by ORR in the draft determination. We support the use of a select number of Tier 1 success measures and agree with the metrics ORR has selected at this level as they are well aligned with outcomes railway users value most from the railway. As ORR will publicly report on these success measures, it will give Network Rail a clear incentive to focus on their delivery and it will also help to improve accountability. It is recognised that ORR will continue to monitor a wider range of metrics through its Tier 2 'supporting measures' and Tier 3 'additional assurance' measures as part of its routine monitoring. We do not agree that ORR should not publicly report on these measures. Reputational incentives are the most powerful tool that ORR possesses, and it should use them to the full. It should monitor all measures closely as they may help to highlight the causes underpinning underperformance against some of the Tier 1 metrics. Furthermore, subject to the proposed change process, ORR must be able to elevate measures to higher tiers as it deems necessary should it consider that Network Rail is significantly underperforming in some areas, to ensure that the infrastructure manager is duly focussed on improvements. The strong focus on performance in the Tier 1 measures is welcome. In particular the inclusion of cancellations as a Tier 1 measure for both passenger operators is welcome as rail users face greater disruption when their trains are cancelled rather than delayed. Punctuality is a factor passengers customers value highly when using rail, but through CP6 performance has declined – suppressing growth and the return of a financially sustainable passenger railway. It should also be noted that a significant proportion of train operators fees within their current National Rail Contracts are reliant on good network performance. In addition to ORR's decision to largely reject the performance trajectories set out by Network Rail in its Strategic Business Plan on the basis that they were unambitious and risked baking in the poor performance experienced during CP6, the focus on performance in the outcomes framework sets out a clear message that performance, particularly sustained disruption, must improve and will be closely monitored by ORR during CP7. We also support the inclusion of asset sustainability as a Tier 1 measure. The messaging in the draft determination around asset sustainability is concerning as assets are expected to age significantly during CP7, which will affect the performance of passenger and freight services. While the funding available necessitates some asset depreciation, minimising the impact of this must be a core focus of ORR and Network Rail during the next Control Period.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

AUKT notes that the ORR are satisfied that Network Rail has described its obligations for accessibility in its SBP for England & Wales, and that the ORR will monitor against these obligations. At AUKT we support the ORR working with Network Rail to understand where customer satisfaction scores can be used to understand the impact of accessibility improvements on the end user. We are disappointed that Network Rail Scotland's interim SBP was silent on accessibility commitments. Like the ORR we expect Network Rail Scotland to address this.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

AUKT recognises that despite a real term funding increase, there will be significant cost pressures facing NR. Like Rail Partners, we are concerned this might have a negative consequence by restricting NR's ability to take whole-life cost approach to its asset maintenance and renewal activity, leading to substantial performance and cost challenges in future control periods. It is important that the final determination accounts for the uncertainty of future inflation and the impact it could have on the ability of Network Rail to deliver renewals activities. The risk adjusted provisions appears more sensible in order to account for this economic uncertainty. The impacts of climate change have had a significant impact on network performance during CP6, and improved network resilience must be a priority to restore train operator confidence in the performance of the network. We agree with ORR's decision that additional structures at risk should be renewed with reallocated funding from a reprioritisation of activity and efficiency challenge. This includes core asset funding for earthworks across some of the NR regions, which is welcome as earthworks have been a long-standing issue affecting network performance. We note that given the funding available for renewals and maintenance, NR might have to make use of operational measures such as speed restrictions to mitigate potential safety impacts of lower than required renewals expenditure. ORR must ensure, as far as possible, that this measure is used sparingly through its monitoring of asset sustainability to ensure that further reprioritisation of renewals occurs during the control period if necessary. Regarding asset sustainability, NR notes that it does not expect to recover asset condition and performance to CP6 exit levels until CP11 in England and Wales, and CP12 in Scotland. This is deeply concerning for rail users and is a significant risk that network performance could continue to decline. There is a pressing need for a longer-term approach to asset management to avoid further decline and maintain asset performance levels over the longer-term. We support the Performance Innovation and Improvement Fund (PIIF) which will help to improve the performance of passenger services.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

AUKT supports the ORR findings and expectations of Network Rail's National Functions

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

AUKT is pleased to see and supports the fact that safety is one of the four core objectives for PR23, alongside performance, asset sustainability and efficiency. We are pleased to see that the key consideration in the ORR assessment is whether Network Rail's proposals for control period 7 (CP7) will allow it to continue to operate safely and in line with its legal requirements. We support the approach and next steps as set out by the ORR in its assessment of Health and Safety.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

We note the proposal to retain the Infrastructure Cost Charge (ICC) for Open Access operators. Open Access continues to play an important role in the GB rail market, with significant evidence relating to how Open Access operators have increased quality and driven passenger demand in both new and existing markets. The retention of the ICC for CP7 has clear implications for new entrant Open Access operators, and whilst we have seen the introduction of a new Open Access Operation on the ECML and a further Open Access application approved between London and Wales, both of which will be subject to the ICC, it remains unclear the full impact the ICC will have on further Open Access opportunities. It is positive to see that the phased in approach will be retained, to allow demand to develop where new markets are served and to recognise the significant mobilisation costs new Open Access operators face, however we would urge the ORR to monitor the situation with regards to the ICC and further Open Access applications to inform any future policy decisions in this area. We are supportive of the position taken to ensure that ICC charges levied against Open Access operators will not exceed the total traffic avoidable costs, as we believe it is important that the regulatory settlement supports an enhanced role for open access services. AUKT is pleased that the ORR plan to continue work on the recalibration process for the VUC and that the ORR will keep its draft decisions under review, particularly if there are major changes that materially affects the analysis presented in the draft determination. We support Rail Partners and the reservations they have with the approach to charging used by ORR in the periodic review and it being consistent with the legislative requirements.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

AUKT recognises some of the drivers behind the Schedule 4 regime opt-out option, including minimising the 'money go round' of public money from Treasury – DfT – Network Rail – TOC – DfT – Treasury in light of the subsidy for TOCs on NRCs. It is possible that at AUKT we could see different outcomes in the opt-out decision making process for our TOCs. This however needs to be balanced with a strong enough incentive regime upon Network Rail to take access to the network for engineering works in a timely and efficient manner. The decision therefore for our TOCs will be complex, and we welcome more detail from the ORR on how the incentive properties of Schedule 4 will be replaced in the event of a number of operators deciding to opt-out. Open Access operators have not previously received the opportunity to opt into the full Schedule 4, where they would make Access Charge Supplement payments in return for full compensation for all Restrictions of Use. We therefore welcome the opportunity to evaluate this opportunity against some of the challenges of enhancement compensation during CP6. We note the ORR is expecting that Network Rail will inform them of those operators wishing to opt in / out of the full schedule 4 regime by the end of October following an 8-week evaluation window. We would like to highlight that we have not yet received an ACS quote for CP7 and given this would represent a significant change to Open Access operators we expect to be granted the full 8-week period to review the proposal prior to informing Network Rail of our decision. We note the recalibration for Network rail payment rates (NRPRs) is ongoing and following the initial publication of rates we raised significant concerns with the reductions proposed specifically in relation the evidence base used and the potential to reduce the incentive on Network Rail to improve performance. However, we appreciate the pragmatic approach ORR has taken on this and whilst reductions will still occur any unintended consequences of the proposed rates should be reduced. That being said, we remain concerned with the knock-on impact of reduced NRPRs on schedule 4 Sustained Planned Disruption (SPD) thresholds. SPD, for good reason, is triggered for only the most severe disruption with very limited instances throughout CP6. A reduction in NRPRs with no change to SPD revenue loss thresholds will result in the requirement for disruption to be even more severe before SPD would be triggered, leaving Open Access operators who choose to opt out of the Schedule 4 ACS even less likely to receive compensation, even in the light of sustained periods of planned disruption. We would therefore urge ORR to review SPD revenue loss thresholds in operator access agreements in light of the proposed NRPRs to ensure disruption is required to be no more severe than the current thresholds suggest. AUKT has significant reservations about the proposed new Schedule 8 payment rates from Network Rail to TOCs, and specifically the impact on the incentive properties of the regime. The significant reduction in the payment rates would heavily dilute the incentives on Network Rail to limit the disruption it causes to train operators and improve its in life CP7 performance.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

AUKT supports the ORR, and its holding of NR to account

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

AUKT supports the current threshold where anything above £50million should be a consulted change

Any other comments on managing change.

AUKT is supportive of the proposals to consolidate the levels of change and renaming. We also support the change process for success and supporting measures, success measure baseline trajectories, and supporting measure forecasts. We also think it is important that for material changes an industry consultation process is undertaken, and support the ORR in leading these.

13. Are there any other comments you would like to make?

NONE

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.
Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.
Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.
If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.
Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Consent

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: ASLEF

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

We welcome the opportunity to feedback on the ORR's draft determination for Network Rail in CP7 and are in agreement that there needs to be a greater focus on renewing core assets as this will help to ensure that the network is safe and enable train performance to improve. Unfortunately we find ourselves in a position where the funding available is not sufficient to effectively ensure that the railways can be maintained and grown at a rate to meet the government's HLOS goals of meeting customer needs; delivering financial sustainability; contributing to long term economic growth; levelling up and connectivity; and delivering environmental sustainability. We ultimately believe that greater funding is required to meet these goals, in part due to the chronic underfunding that we have seen for maintenance and renewals alongside poor planning and stripping back of rail infrastructure projects, we are further concerned that this underfunding could lead to safety concerns on the railways in CP7, especially when you factor in the impact of climate change and extreme weather events. We understand that the ORR has to work within the confines set by the government in terms of its inadequate funding levels and have assessed Network Rail's business plan with these constraints. In terms of the ORR's draft determination we understand the efforts to shift funding about to try and increase the available funding for core asset renewals and welcome these efforts although we are concerned that the draft determination may be trying to be overly ambitious in certain areas and pushing to withdraw money from works which could provide returns late into CP7 and beyond in to CP8. We will outline our views on specific points in greater detail below.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

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3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

We are concerned that the lack of appropriate funding could lead to a negative cycle where Network Rail is stretched to maintain assets and as such renewals of core assets are delayed which leads to the current assets needing further maintenance work and resultantly costing more money in the long run. We are concerned that the current plans will lead to similar incidents as to the recent example of the Nuneham Viaduct where maintenance and speed restrictions were in place until ultimately renewal works were needed. In terms of the

ORR’s draft determination we think that point 3.8 which proposes stretching the North West & Central region’s train performance trajectory may be too great of an ask of the region where during CP7 works will be ongoing on the West Coast Main Line to ensure that HS2 can be effectively introduced, this is a region which is already constrained due to high access demands and bottlenecks. We are supportive of the proposal to introduce a Performance Improvement and Innovation Fund (PIIF) of £0.04 billion in England and Wales for CP7 and can see this being most effective once Great British Railways comes into existence. We also support the proposal to introduce a separate targeted train performance fund in Scotland. We are cautions that the ORR’s push to set more challenging trajectories for freight train performance, whilst well intentioned it may be unrealistic with the current levels of funding and could give potential freight customers a misleading analysis of the service they can expect. However we expect Network Rail to share further details with the ORR on how their forecasts were reached and perhaps a happy medium between the two forecasts can be found.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

We echo ORR’s concerns with the lack of detail in Network Rail’s Strategic Business Plan around accessibility and expect these details to be fleshed out ahead of a final determination. We also welcome the introduction of a Diversity Impact Assessment standard and hope this can be expanded to Scotland. We expect both Network Rail England & Wales and Scotland to provide ‘changing places’ at all national hub managed stations and to maintain their availability as Scotland has already introduced these toilets. In light of the DfT/treasury’s proposal to shut ticket offices across the network it may be pertinent to push for the fitment of tactile paving to be sped up to be completed ahead of the current April 2025 deadline. We understand the ORR’s concerns of skewing investment by measuring the delivery of accessibility improvements, however we would expect that, investment in ensuring the railway is safe and accessible to all passengers should be properly considered and encouraged. We are supportive of the ORR’s work to develop a way for Network Rail to report on step-free journeys to enable this to be measured through CP7 as greater work is needed to ensure that as much of the network is accessible.

6. Our review of Network Rail’s proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

We acknowledge the ORR’s attempt to address Network Rails anticipation of an increase in service affecting failures of assets towards the end of CP7 due to inadequate funding. We also hold concerns around earthworks, structures, operational property and track and have considered ORR’s proposal to enable £0.55 billion more expenditure on core asset renewals. The first proposal to push 25% of the proposed works on life expired assets into

CP8, releasing £0.30 billion, could be like robbing Peter to pay Paul as these works will still be needed. The original plan was to deliver a complete package of work reducing long term disruption on the network and ensure that works are completed before the introduction of HS2 services on the West Coast Main Line. Instead the funding for these works would be spent on core renewals in CP7 but could leave the North West & Central Region with more disruptive work needed in to CP8 extending disruption from CP7 to CP8. If Network Rail is to push back these works we would expect the ORR to also re-consider its on time trajectory for North West & Central region. We are not sure if choosing to not refurbish the high output plant is wise in the long term and expect Network Rail to provide the ORR with a clear approach to the use of high output in CP7 in response to the draft determination. We agree that Network Rail's revenue forecasts appear to be too low and should be revised to factor in the increase over the year in passenger demand / usage, we do however find there to be a slight contradiction in the ORR's assessment of Network Rails management of their property portfolio as concerns are raised around the loss of expertise and the movement of the portfolios to the regions but then outline a desire for Network Rail to be more ambitious in looking at sale opportunities. We would not want Network Rail to sell off too much of its property portfolio to try and make up for a lack of funding from the treasury. As is acknowledged in the draft determination, the reduction of £0.7 billion from CP6's sales is mainly down to the one-off effect of sales such as the Core Valley Lines, we would want to see a greater push to maximise income from assets instead of selling them and are concerned that the draft determination is un-supportive of Network Rails plans to invest in its future with projects which won't produce returns until late CP7 or in to CP8. We hope that prior to the final determination sufficient detail can be provided to the ORR which would satisfy them of Network Rail's plans to invest to grow revenue in years to come, especially as this could help Network Rail meet the HLOS goal of financial sustainability, whilst we all acknowledge that the current level of funding is inadequate we should not then stop any investments which would produce returns in the future or we could encourage what seems to be the government's intention of continued long term decline. With regards to Network Rail Scotland we also hold concerns with some core assets not being prioritised and due to a lack of appropriate funding we will see speed restrictions and a deterioration in asset sustainability which will make it hard for hard for the Scottish Ministers' train performance targets to be met.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

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8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

As the funding is insufficient we unfortunately find ourselves in a position where Network Rail is planning to maintain what they can and utilise speed restrictions to try and eek out as much life from the infrastructure. We welcome the ORR's assessment (agreed by Network Rails own Technical Authority) that there is insufficient demonstration of mitigations to manage the increase in risk posed from a limited set of core asset renewals. We already see issues with the network due its age with many earthworks and structures being built to engineering standards that are not recognised today and as such pose concerns for our members operating services on these parts of the network with particular concerns around rail adhesion, the maintenance of track, tunnels and vegetation all impacting on the safety of the railways. Point 5.7 of the England & Wales overview highlights an area of concern for us, the Carmont crash and Haddiscoe wash out point to the issues that insufficient drainage can cause to the safety for our members and passengers. We welcome the ORR highlighting that Network Rail's plan to not use dedicated drainage teams is inconsistent with one of the recommendations of Lord Mair's report. In a climate crisis when we expect extreme weather events to result in extreme heat and greater flooding risks having an impact on the railways, we must ensure that lessons are learned and work is done to keep the railways safe. Due to the funding restraints on Network Rail Scotland we also hold the concerns raised by point 5.6 around the potential for loss of knowledge and how this could impact on the ability to implement Network Rail's 'modernising maintenance' programme, we hope that the ORR can also raise this with regards to any future proposed job and funding cuts in this area. We agree with point 5.8 of the overview of Network Rail Scotland's plans as we are also concerned that the earthworks are not being satisfactorily managed at present and we need clarity on the deliverance of the action plans developed in response to the Carmont investigations. With the current proposals for additional maintenance and operational restrictions, which are lower safety standards and much further down the hierarchy of control, being proposed in place of renewals we hold concerns for the safety of the network in Scotland through CP7, particularly when the increase extreme weather events and their impact are factored in.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

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10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

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11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

Click or tap here to enter text.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

Click or tap here to enter text.

Any other comments on managing change.

Click or tap here to enter text.

13. Are there any other comments you would like to make?

Click or tap here to enter text.

Thank you for taking the time to respond.

Annex A: Publishing your response

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Consent

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- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: c2c

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

c2c generally supports ORR's draft determination. Recognising the uncertain times, the industry is in we acknowledge the need for a more adaptive regulatory framework. We support the minimal change approach made in PR23 to try and provide stability leading into CP7.

We support ORR's evaluation of Network Rail's proposed performance trajectories. Performance during CP6 was subpar, and while we understand the influence of industrial action and post-Covid challenges, performance affects passengers returning and route growth.

We believe concentrating on key Tier 1 measures will lead to improved clarity and accountability. If underperformance is detected, it's essential for ORR to proactively challenged for better results. This reassurance is necessary for operators to have faith in the network's long-term efficiency, which in turn, supports rail growth. Our feedback also includes concerns about potential reductions in Network Rail's payment rates to TOCs which might impact Schedule 8's incentives, potentially leading to poorer outcomes for passengers. We, therefore, concur with ORR's decision in August 2023 against a full-scale implementation of the new rates in CP7.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

c2c supports the ORR's decision to insist on a singular performance target within the Network Rail outcomes framework, rather than adopting Network Rail's range approach from its Strategic Business Plans. A definitive target provides clarity and simplifies the task of holding NR accountable. We also align with ORR's stance urging Network Rail to elevate its performance goals, ensuring that CP6's subpar performance isn't considered a norm and underlining the importance of performance for passengers. Although we acknowledge the need for realistic targets.

Given the limited funds throughout the control period and potentially beyond, c2c agrees with ORR's recommendation for Network Rail regions to focus investments on tackling asset wear and strengthening network robustness and resilience. We would highlight that the potential use of TSR's, in light of a detreating network and minimal funding would have a huge impact on performance and our ambitions of providing passengers with a punctual service while growing passenger numbers.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

We agree with ORR's commitment to ensuring train performance remains a primary focus. The emphasis on reliability and punctuality is in line with our values and is crucial to the satisfaction of our passengers.

c2c supports ORR focus on holding Network Rail accountable to its commitments through the CP7 outcomes framework. Clear Tier 1 success measures such as 'On Time' and 'Cancellations', align with our own priorities of ensuring reliable and timely service for our passengers. Network performance, whether track or train is crucial for passenger satisfaction. Network Rail's performance greatly affects our own operations and subsequently the perception our customers have of our service.

The move to point targets for regional performance sets clear standards, but flexibility in holding Network Rail to account ensures a fair approach across the network to regional inevitable unpredictability's. Concerning passenger cancellations, we agree that some of Network Rail's forecasts appear less ambitious. Ensuring challenging yet realistic targets can prompt the required improvements in service reliability.

The establishment of the Performance Improvement and Innovation Fund (PIIF) is a commendable step towards fostering collaboration and promoting innovative solutions to pressing industry issues. We would appreciate more clarity on how these funds will be accessed and the criteria for project selection, given CP6 PIF accessibility was limited to effectively first of its kinds.

It's vital that the broader scope of the railway's impact, from environmental considerations to financial performance, is also accounted for in the CP7 framework. We support a holistic view that includes not just immediate train performance but also the long-term sustainability and efficiency of the rail industry.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

c2c are committed to ensuring accessibility within the rail industry is not just a priority; it's a core commitment. Embracing a collective, industry-wide approach is paramount to ensure that our railways are wholly accessible to every passenger.

The ORR's 2023 annual rail consumer report provides encouraging insights. It outlines the growing demand for passenger assistance, furthermore it highlights the broad satisfaction among passengers with the services they receive. Network Rail, being the lease holder and infrastructure manager, has a pivotal role to play on supporting with us improving the accessibility at our stations.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

c2c welcomes the SoFA allocation but equally has reservations. This budget limits Network Rail's long-term asset maintenance and renewal strategy, potentially limiting performance and pushing future costs into future control periods.

Network performance in CP6 was subpar and enhancing resilience is crucial to regaining trust in network efficiency. With the current funding, Network Rail might resort to operational tweaks, like speed limits, to counteract safety hazards from limited renewals, which would have a huge effect on passengers. ORR should ensure such measures are used minimally.

On asset sustainability, Network Rail's projected recovery to CP6 standards is not until CP11 (England and Wales), which raises concerns about potential network degradation. A strategic, long-term asset management plan is required. We endorse the PIIF initiative to boost passenger and freight performance. To combat CP7's financial hurdles, Network Rail should explore ways to diversify its income, like leveraging its properties.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

c2c acknowledges the limited funding for CP7, we emphasise the need for all Network Rail units to operate efficiently to make the most out of the SoFA funding.

We support ORR's review of the costs presented in the SBPs for Route Services and support the move to introduce an added efficiency challenge, bringing funding in line with CP6. To enhance efficiency, we believe in the importance of consistent communication between the National Functions and Network Rail's regional units.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

c2c places utmost importance on ensuring the health and safety of our passengers, employees, and partners, and we understand the criticality of the concerns raised by ORR. We acknowledge Network Rail intends to use a Market Led approach to prioritising expenditure on high value routes, while this appears logical the approach must continue to closely monitor risk on other lines too so that safety is not compromised.

We acknowledge ORR's findings on risk management and mitigation that there has been an insufficient demonstration of mitigations for increased risks due to reduced renewals. We agree that a strategic balance between renewals and maintenance is essential, and any shift in this balance should be adequately supported by robust risk management strategies.

Regarding maintenance Plans, we understand the increased demand on maintenance due to various factors including deferred renewals from CP6, weather resilience recommendations, increased freight traffic, and the challenges of 2022-2023 industrial actions. A clear and structured plan that addresses each of these areas will be vital for a safe and efficient operation.

While we support Network Rail's vision to modernise maintenance, it's imperative that this doesn't come at the expense of losing invaluable expertise in asset safety areas. The programme should not just be about modernising but ensuring knowledge transfer, capacity building, and achieving efficiencies.

We support the ORR's expectation that Network Rail should present a clear roadmap on specific health and safety programmes how these challenges will be addressed in CP7 is vital.

c2c, align with ORR's perspective that Network Rail must demonstrate robust, practical, and efficient strategies to manage health and safety risks in CP7. We look forward to Network Rail's subsequent plans to ensure a safe and resilient railway system.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

c2c acknowledges the intentions to retain most of the current charging framework whilst also making necessary modifications to ensure. While simplification is commendable, we stress the need to ensure that the changes do not unduly impact operators or result in unforeseen costs.

c2c express concerns about ORR's charging approach in the periodic review. The draft indicates an average VUC increase of 9% in CP7, dependent on vehicle type. This proposed increase, reflecting the short-run marginal cost of traffic changes, seems to contradict with Network Rail's SBPs, predicting major traffic reductions, chiefly due to projected passenger service decreases.

ORR's rationale, linking decreased passenger traffic to the VUC rate hike, seems to conflict that variable charges should cover the direct operational costs of every service.

Regarding EC4T, c2c supports initiatives that encourage efficiency and transparency. Streamlining the traction electricity charge and endorsing the use of metering for its greater accuracy, is a step in the right direction.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

c2c acknowledges the significance of Schedules 4 & 8 as pivotal components of the railway industry's framework. These schedules play an essential role in ensuring that Network Rail and train operators work collaboratively to minimise disruptions and enhance the performance of the UK rail network.

Regarding schedule 4, the flexibility for train operators to opt out of Schedule 4 is intriguing. While it offers potential financial advantages, such as not having to pay an access charge supplement and the merry-go round of money, there are inherent risks. c2c will have to evaluate, balancing financial implications against the operational risks. We have concerns regarding the effect on incentives within the possession's regime. Schedule 4 facilitates and drives Network Rail to notify operators about engineering works in advance and execute these efficiently. This supports us being able to provide timely communication with customers and reduces service disruption. An opt out impact could see last-minute possessions and extended engineering works, with no real impact on Network Rail and a huge impact on customers. There has already been evidence of this in CP6 with late notice possessions requested by Network Rail increasing. c2c also notes that there is currently no KPI or mechanism to hold Network Rail accountable in CP7 for such performance.

We understand the rationale behind the proposed removal of Schedule 8 payments between Great British Railways and its contracted operators. However, before removal a fit for purpose incentive mechanism will need to be outlined, consulted and agreed across the industry.

c2c acknowledges the complexities involved in recalibrating Schedules 4 & 8, especially considering the pandemic's profound impact on passenger behaviour. The new evidence indicating that demand is less responsive to disruption than previously believed is noteworthy but feel we still do not have the correct methodology. ORR's plan for minimal change to provide industry stability in an unstable time does not support the fist proposal of an 80% reduction in schedule 8 rates. We reluctantly support the proposed option to apply a single transitional adjustment to moderate the CP7 impact of the new methodology.

c2c appreciates the ORR's efforts in reviewing and refining the frameworks of Schedules 4 & 8. While we understand the need for adaptation and change, we underscore the importance of consistent engagement with train operators to ensure the formulated policies and recalibrations are not only grounded in evidence but are also pragmatic and conducive to improving network performance.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

c2c support that the financial framework from CP6 remains predominantly suitable for the upcoming period, with minimal alterations needed. We acknowledge that the overarching decisions concerning the financial framework are contingent upon approval from the Department for Transport, who are the principal funders of Network Rail's financial agreements.

The current periodic review is unfolding amidst notable economic challenges. Notably, the pressing concerns surrounding inflation are projected to persist as we transition into CP7. Consequently, it's important that the ORR maintains oversight of Network Rail's financial health, ensuring its aptitude to uphold the commitments in its Strategic Business Plans. Should further economically conditions impact Network

Rail incapable of fulfilling any of its obligations or planned programmes, we emphasise the importance of immediate communication to support making a decision based on what is best for the route and customers.

13. Are there any other comments you would like to make?

None

From: [Redacted]
To: PR23 Programme
Subject: [EXTERNAL] Crosscountry response to PR23 determination

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon,

Crosscountry is pleased to offer our response to the draft determination. Crosscountry is part of Arriva who also operate Chiltern Railways, Arriva Rail London and Grand Central. It is important to be cognisant that the breadth of train service operations delivered by the 4 TOCs within Arriva mean that different opinions and priorities will be natural. However recognising the commonality of some areas, there will be a separate Arriva UK Trains response.

- XC operates within all of the regions and is aligned to the FNPO team that sits within System Operator. Therefore we are unique as a TOC in terms of having a role to play all over the UK.
- Because of this it is important that, whilst the various regions and routes within regions all have their own approach, priorities and targets, there is some consistency maintained across borders between the routes & regions – recognising that very few of our journeys are wholly contained within one route with the exception of Edinburgh to Glasgow & Aberdeen, and Bristol to Paignton / Penzance to Plymouth.
- We fully support ORRs feedback that performance targets that NR have set need to be more challenging (in England & Wales), as well as the concerns voiced around a reduction in renewal volume and a subsequent uplift required in reactive & preventative maintenance on aging assets – we have experienced already a deterioration in vegetation management particularly across Western & Central routes and have recently written to the RMDs in light of this. We welcome ORRs recommendation that NR increases its renewals work bank from that proposed originally. The observation that 'value based management' is not compatible with an obligation to protect as far is as reasonably practicable is also one that XC recognises and supports – how would such a categorisation be undertaken?
- We also support ORRs recommendation that £50m of Scotland's 'unallocated funds' should be directed to increase the volume of renewals undertaken – we are concerned that part of Scotland's mitigation for fewer renewals in an increase in operational constraints such as Speed Restrictions given the increase in on time performance targets.
- We welcome the inclusion of the £0.4bn PIIF and look forward to further details on how that money will be allocated across the network, building in expertise from TOCs working in partnership with Network Rail
- We also welcome ORRs recommendation that NR increases the amount of money for risk having experienced several major incidents including Carmont, Nuneham, Viaduct and the ongoing & major bank slippage at Little Hagloe on the Severn Estuary. These 'unforeseen' events are becoming more common and are likely to continue to do so in the light of our changing climate – XC would welcome further investment in preventative as well as reactive funds for these events.
- In terms of the draft determination for System Operator, XC also recognises the outstanding decision on the Industry Timetable Technology Strategy (ITTS) workstream

and would observe that the scale of ambition outlined for this program, and also the Better Timetables for Passenger & Freight (BTPF), have not been met in CP6 for various reasons. Significant changes were planned for ITTS and could potentially have collaborated in the systems world of TOC & FOCs as well – with Digital signalling on the horizon it is surely appropriate to revisit the planning systems that support our timetable given the granularity of data available to plan with that will emerge with a move away from conventional signalling. It is unclear what the scope of ITTS and BTPF now are, and how the proposed CAPEX of £56m would be spent.

- It is noted that are fright specific plans within the System Operator draft determination, however none apparent for National Passenger Operators – in connection with this, we welcome draft determination 5 and will work with NR to agree these targets *(Draft decision 5: We require the SO to develop and include updated On Time and Cancellations forecasts for each NPO in its delivery plan for CP7.Within this, we require the SO to set out more detail on the impact of its actions on NPO stakeholders.)*
- We specifically welcome recommendation 2.11 within System Operators determination that a return to Network Code Part D compliance must be in place by the December 2024 timetable production process – we remain open & willing to collaborate on further iterations of BTPF but fully endorse a return to Part D compliance.
- We question 2.14 with in the System Operator determination as we had understood the 'Access Planning Program' to be related to engineering access (and systems such as PPS) rather than for access rights?
- We wish to specifically voice concern regarding the HLOS requirement for Scotland shown on page 28 of the System Operator draft determination to *"3.4 Establish a Scotland-based timetable team*

  to deliver all activity on the Scottish network". Whilst we would not have a concern in an independent Network Rail Scotland timetable team, so long as our national through journeys are still treated as such and the national governance, processes systems are still established & adhered to. We would question whether two separate teams essentially carry out the same activity would be as (or more) efficient that the current arrangements. We would be gravely concerned were a Scotland based team to be comprised of Network Rail and a TOC, given the obligation for independence and neutrality required in allocation of capacity.
- Finally we welcome the option to 'opt out' of the Schedule 4 regime, whilst recognising that an appropriate balance between minimising the 'money go round' of public money from Treasury – DfT – Network Rail – TOC – DfT – Treasury in light of the subsidy for TOCs on NRCs, with a strong enough incentive regime upon Network Rail to take access to the network for engineering works in a timely and efficient

Kind regards

[Redacted]

crosscountry

Legal Disclaimer - XC Trains Limited.

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: DB Cargo (UK) Ltd.

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

DB Cargo (UK) Ltd. [DBC] is generally supportive of the conclusions reached by ORR in the Draft Determination. There has been a good level of engagement and dialogue with ORR during PR23. It is recognised that PR23 has taken place against the backdrop of significant proposed reform within the rail industry, aligned with wider economic challenges. The uncertainty generated has required additional flexibility in setting the regulatory regime. Proposed changes to the regulatory regime ahead of CP7 are limited, but intended to provide stability and are welcomed. DBC acknowledges that ORR has a fine line to tread in responding to the performance trajectories proposed by Network Rail in the Strategic Business Plans. However, DBC is concerned that the Network Rail performance target is soft and insufficiently ambitious. DBC contends that an adjustment to Network Rail's performance benchmark is required to reflect the projected reduction in network mileage in CP7. The proposals for the performance regime outlined in the Draft Determination lack consistency in approach. Performance during CP6 has been unacceptable with the Freight Delivery Metric (FDM) reaching its lowest recorded level. Whilst the direct impact of industrial action on train performance is obvious, Network Rail has evidently generated a maintenance backlog which has impacted performance. Sustained poor network performance is stifling the competitiveness of rail freight and suppressing growth. ORR must use the outcomes framework to scrutinise Network Rail's performance both at regional level and for System Operator during CP7. DBC contends that the Network Rail scorecards approach has not been effective in driving performance in CP6 and that targeting appropriate Tier 1 measures will provide improved focus and accountability on the key metrics for the freight sector. The intent of strengthening System Operator through the previous CP6 determination, has failed to deliver the specified challenge to devolved routes. Where poor performance is evident, it is critical that ORR acts promptly to ensure Network Rail enacts plans to improve performance making use of the regulatory powers at its disposal. This is necessary to provide the freight sector with confidence that a reliable and high performing network will be delivered on a long-term basis. It will underpin private investment and drive growth in the freight sector. The performance regime must support this objective. ORR will need to scrutinise performance closely, to detect any unintended consequences where Train Operators opt out of Schedule 8. DBC understands that ORR has decided not to implement the new methodology for the Network Rail payment rates in full in CP7, citing concerns about the dilution of incentives on Network Rail and desire to avoid a significant swing in the regime. In light of this decision, DBC considers that a similar adjustment should be applied to the freight benchmark and cancellations threshold to ensure the regime is balanced and drives appropriate incentives. So far as access charges are concerned, DBC has reservations with the methodology ORR has applied to calculate charges and the impact this will have on competitiveness of the freight sector with other modes. Could ORR be more creative, whilst maintaining consistency with legislative requirements, in setting charges which will encourage rail freight usage and drive growth? The Draft Determination results in an increase of 18% in freight VUC rates across CP7 in real terms in comparison to CP6. It should be noted that this is despite Network Rail forecasting service levels at 88% of pre-Covid levels. The decision not to update the phase in of VUC rates at the PR23 trajectory is welcomed, however, access charges for freight continue to rise significantly. This will affect the ability of the freight sector to compete with other modes and is misaligned with achieving the freight growth target.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

The decision to insist on specific targets for the performance measures assessed within the Network Rail outcomes framework, rather than the proposed Network Rail approach of adopting a range is strongly supported. Setting a clear target enables ORR and stakeholders to hold the infrastructure manager to account. DBC supports ORR's decision to require Network Rail to be more ambitious in the performance trajectories it has set out, rather than re-baselining to reflect the poor performance experienced towards the tail end of CP6. This sends a clear message concerning the importance of performance to the freight sector. With available funding constrained, the ORR's recommendation that Network Rail regions should prioritise investment to mitigate asset degradation and improve network resilience is supported. This includes additional renewals expenditure, additional funding for earthworks and vegetation management to avoid the imposition of usage restrictions. The freight sector is particularly concerned that Heavy Axle Weight capability is not compromised and that freight operators and customers can have confidence and certainty in this important area. DBC welcomes the £72m committed in Network Rail's Strategic Business Plan to invest in structures to support heavy axle weights. Within this limited funding it is important that structures at greater risk of having their capability degraded and infrastructure supporting high volumes of freight movements are prioritised. There are a high number of metallic underbridges in the Southern Region, a significant volume of heavy axle weight movements and timebound dispensations. DBC would have expected to see a greater weighting of the available funding allocated to the Southern Region. The prospect of withdrawal / removal of this capability would be hugely damaging and render the growth target unachievable. ORR has taken note that Network Rail is not maintaining the network in line with the network capability it is funded to deliver. This is a matter which must be addressed to avoid the risk that bulk freight flows are unable to operate on certain lines where they have contractual rights to do so.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

Engagement has varied depending on the Network Rail region. A co-ordinated and consistent approach to engagement across Network Rail's regions is required. This approach should recognise that national freight operators such as DBC operate services which cross Network Rail's regional boundaries. The late publication of the HLOS and SoFAs has impacted on Network Rail's ability to engage with stakeholders. The delay in publication of the Network Rail Strategic Business Plans has made it difficult to engage and obtain meaningful operator feedback. This has largely been outside Network Rail's control and caused by wider economic and political circumstances. However, it has compromised the ability of operators to both influence and challenge Network Rail's plans to deliver for its customers. Where engagement has taken place, it has often occurred at short notice and placed a high demand on freight operators' limited resource. The lack of transparency during the business planning process has caused uncertainty during the periodic review, an area where improvement will be required when it comes to PR28.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

DBC supports the movement away from a scorecard approach which has not proved effective during CP6. The setting of appropriate Tier 1 success measures as proposed in the outcomes framework set out by ORR in the Draft Determination is welcomed. ORR will publicly report on these success measures which will incentivise Network Rail to focus on their delivery and improve accountability. ORR will continue to monitor a wider range of metrics through its Tier 2 "supporting measures" and Tier 3 "additional assurance" measures as part of its routine monitoring. ORR should be ready to elevate measures to higher tiers as necessary should it consider that Network Rail is significantly underperforming in some areas, to ensure the infrastructure manager is sufficiently focussed on delivering. The strong focus on performance contained in the Tier 1 measures is critical. In particular the inclusion of cancellations as a Tier 1 measure for freight operators is welcome, as disruption to customers and supply chains is more significant when trains are cancelled rather than delayed. Consistency in performance and punctuality are factors that freight customers value highly when using rail, but through CP6 performance has declined. This is suppressing growth opportunities in the freight sector. The focus on performance in the outcomes framework sends out a clear message that performance, particularly sustained disruption, must improve and will be closely monitored by ORR during CP7. The Network Rail freight benchmark has not been adjusted to account for the forecast reduction in network mileage during CP7, resulting in a softening of the benchmark when CP7 forecast mileage is accounted for. This appears contrary to the strong messaging about performance in the Draft Determination. DBC is pleased to see that freight growth has been included as a Tier 1 measure reflecting its importance to the sector and a priority for government.

Inclusion of the freight moved metric will capture both tonnage moved and distance. Inclusion of a success measure for freight growth will ensure that all Network Rail's regions will focus on delivering for freight on their infrastructure and will help to achieve an improved awareness of freight customers' requirements from the rail network. DBC questions whether ORR's Draft Determination is aligned to achieving the freight growth target, particularly concerning the proposals for access charges? In response to Q1. DBC outlined the need for ORR to be more creative in its approach to access charges. Monitoring of freight growth against target is important to ensure that Network Rail and freight operators collectively deliver. DBC will work closely with Network Rail to identify opportunities for growth so that the capacity to accommodate an increase in freight services can be provided. Efficiency initiatives for longer, heavier and more direct services, such as those made possible during the pandemic will help in achieving the growth target. The narrative in the Draft Determination around asset sustainability is a concern as assets are expected to age significantly during CP7, which will affect network performance. DBC supports the inclusion of asset sustainability as a Tier 1 measure. While the funding available will result in some asset depreciation, minimising the impact of any degradation must be a prime focus for ORR and Network Rail during CP7. This is clearly important from a safety perspective as well as for resilience of the network.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

DBC has no comment to make in response to ORR's accessibility assessment.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

DBC welcomes the funding made available in the SoFA allocation. This represents an increase in real terms despite the challenging economic circumstances and significant additional funding made available by government to support the industry during and post the pandemic. Despite this increase in real terms, it is evident there will be significant cost pressures facing Network Rail which will require it to act efficiently and prioritise activities to deliver for its funders and customers, including the freight sector. The available funding will also restrict Network Rail's ability to take a whole-life cost approach to its asset maintenance and renewal activity, resulting in additional cost challenges in subsequent control periods. The impact of climate change and weather related events have had a significant impact on network performance in CP6. Improved network resilience must be a priority to restore customer confidence in the freight sector. DBC supports ORR's view that additional structures deemed to be at risk should be renewed with funding reallocated through reprioritising activities and challenging efficiency. This includes core asset funding for earthworks across some Network Rail regions, which is to be welcomed as earthworks have been a long-standing issue impacting network performance. The approach to prioritise available funding towards higher income routes must take whole industry benefits into account and ensure there is balance in ensuring routes with a high volume of freight traffic receive appropriate priority. DBC notes that the funding available for maintenance and renewals may result in Network Rail imposing operational measures such as speed restrictions. This would be to mitigate the potential safety impacts of renewals expenditure at a level below that required to maintain published capability. This is not in the interests of customers including the freight sector and will affect rail's competitiveness with other modes. ORR must ensure that this measure is used sparingly through monitoring of asset sustainability to ensure that further reprioritisation of renewals occurs during CP7 if necessary. Regarding asset sustainability, Network Rail has stated that it does not expect to recover asset condition and performance to CP6 exit levels until CP11 in England & Wales and CP12 in Scotland. This is of deep concern to rail users including the freight sector and a significant risk that network performance could continue to decline. The dispensations provided by Network Rail for heavy axle weight movements, primarily for the bulk freight sector, must not be viewed as an unwitting expedient because asset degradation becomes accepted. There is a pressing need for a longer-term approach to asset management to avoid further decline and maintain asset performance levels over the longer-term. DBC is supportive of the Performance Innovation and Improvement Fund (PIIF) which will help improve the performance of services including freight. The improved governance for CP7 is noted and will ensure that funding is allocated as efficiently as possible to maximise the improvements realised from the PIIF.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

DBC acknowledges that the ORR's approach to Network Rail's national functions must be proportionate given the focus of regulation via the outcomes framework on Network Rail's regions and System Operator where most funding is allocated. However, with constrained funding available in CP7 it is important that all Network Rail activities are challenged to deliver efficiently so that the available funding in the SoFA extends as far as possible. The decision to apply an additional efficiency challenge to Route Services so that funding is more consistent with that allocated in CP6 is welcomed. This will provide additional funding for renewals that are much-needed in order to deliver a high-performing rail network for the freight sector. The national functions will be able to deliver more efficiently if there is regular engagement with Network Rail's regional functions. ORR has noted improvement and DBC would encourage Network Rail to ensure this continues in CP7.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

It is critical that safety of the rail network is not compromised in CP7, despite the constrained funding available. DBC is reassured that Network Rail considers its approach to asset management in CP7 will not result in a reduction in safety for customers and rail staff. Network Rail's approach to prioritise expenditure on high value routes must equally ensure risk is closely monitored on other lines too, so that safety is not compromised. Network Rail's management of earthworks and drainage in CP6 has been suboptimal. ORR's view that the recommendations of the Weather Risk Task Force must be integrated within Network Rail's CP7 plans is supported. With an increasing impact of climate change likely to present further challenges to resilience of rail infrastructure and consequently safety in CP7, this must be a priority area for Network Rail. It is important that the infrastructure manager takes a proactive approach to mitigating risks during CP7 to minimise disruption to services and ensure safety levels are maintained. This should include clear accountability with Network Rail's regions and routes. DBC notes Network Rail's intention to use operational controls during CP7 to mitigate risks, but as noted in the response to Q6. DBC is concerned that this approach is not in the interests of the freight sector, so such measures should be minimised where possible. Such measures can help to mitigate safety risks, however, the introduction of operational controls such as speed restrictions will introduce further safety risks for the industry to manage.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

Rail freight operates within a highly competitive freight and logistics sector and the track access charges paid by freight operators determine rail's ability to compete with other more carbon intensive modes such as road where charges including road fuel duty have remained unchanged in over a decade. In this context, DBC welcomes the ORR's decision not to increase the variable usage charges applied to freight services by the recalibrated PR23 trajectories and instead continue to apply the phase-in trajectory outlined during PR18. A £77m increase in VUC, as indicated by the PR23 recalibration methodology would have been significantly detrimental to the commercial viability of rail freight services and suppressed freight growth to which government is committed. Under the PR18 trajectory, VUC rates for freight will increase by 18% on average in real terms, which represents a £41m increase over the Control Period. DBC would like to understand from ORR how this is consistent with delivering the rail freight growth target? An alternative approach in setting charges on the basis of long-run efficient costs for Network Rail would be in line with supporting the freight growth target and is something ORR has adopted in the past. DBC notes that the ORR intends for freight VUC caps to be unwound through CP8, which creates a cliff edge for the rail freight industry. It is therefore important that there is early engagement with ORR and funders during CP7 ahead of PR28 to identify a long-term solution to rail freight charges which satisfy regulatory and legal requirements while supporting the growth of rail freight services and the governments' decarbonisation agenda. This would include taking a cross-modal approach to freight charges, so that pricing better captures externalities of different freight services. The current charging regime disincentivises operators from using low-carbon traction (e.g. electric or sustainable fuels) through access charges. It is noted that freight ICCs will fall with the exception of biomass services. This is to account for the increase in VUCs and EAUCs paid by freight operators to ensure that the overall level of cost recovery is set at the correct level and reflect each market's ability to bear additional cost. While the reduction in ICCs is welcome, due to the hike in VUC rates, overall charges paid by freight operators will increase, making rail freight less attractive to prospective customers. This is contrary to the governments' strong commitments to rail freight growth and the decarbonisation agenda.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

DBC understands the rationale for providing an option for operators to opt out of Schedule 4 for the duration of CP7, pre-empting future rail reform and to reflect current contractual arrangements where many operators no longer hold revenue risk. However, DBC is concerned with potential unintended consequences this may generate for the Possessions Regime. The principles of Schedule 4 should incentivise the infrastructure manager to provide operators reasonable notice ahead of disruptive engineering work and encourage them to undertake this work as efficiently as possible. This enables operators to notify and engage with customers to minimise disruption to supply chains. A Schedule 4 opt out would mean that operators are no longer compensated for restrictions of use on the network and it would therefore seem unlikely that commercial operators would opt out of the regime in its entirety (noting that in CP6 Open Access operators chose not to pay the Access Charge Supplement and therefore were only compensated in cases of severe disruption). Should a significant number of operators choose to opt out of Schedule 4, both for the entirety of CP7, or subject to the creation of GBR, DBC is concerned that this will dilute the incentive properties of the regime on Network Rail. The risk is that the industry is impacted by more late notice possessions and overrunning engineering works. DBC would like to understand from ORR how the incentive properties of Schedule 4 will be upheld? During CP6, with DfT operators no longer holding revenue risk, the industry has witnessed an increase in the number of late notice possessions initiated by Network Rail. Initially this was understood to be necessary to address a backlog in engineering works following the pandemic, however this behaviour has continued. Such disruption has a significant impact on freight operations and supply chains and risks undermining confidence in rail. DBC notes the joint GBRTT / Network Rail position that it would be beyond the ORR's regulatory role for it to have visibility of the financial incentives that GBR places on its operators. This appears to be important in order for ORR to be satisfied that the future performance regime encourages all parties to contribute to a high performing railway. It is understood that Schedule 8 will continue to apply to all non-GBR operators, which is welcome as any commercial operator will continue to value the incentives and protections provided by the regime. However, there are concerns that the incentive properties will be heavily diluted if Schedule 8 does not apply to operators responsible for running a high proportion of traffic on the network. DBC recognises the rationale for ORR's decision to enable a mid-Control Period recalibration of Schedule 8, particularly after the experience of the pandemic's effect on train services during CP6. The need for greater flexibility to respond to material changes in traffic levels and/or funding must be balanced against the benefits of a stable regime. It is therefore important that the threshold to trigger recalibration is set high to avoid uncertainty and deter investment from commercial operators in assets and performance improvement initiatives. Through dialogue at the recalibration working group, ORR will be aware that the preference of freight operators and Network Rail is for the new methodology for TOC payment rates to be implemented in full. This was on the basis that the change in methodology had been previously agreed by the passenger working group and any manual adjustment to the payment rates would affect the freight element of the regime. ORR's decision to use a mix between the PR18 and PR23 methodologies appears to have been made to address concerns with weakening incentives on Network Rail and to avoid a large change in payment rates in one step. DBC contends that the arguments used to defend this decision are weak and that freight operators should not be paying inflated penalties for 3rd party delays on the network. Furthermore, whilst this compromise has been brokered to avoid harming the performance incentives of the passenger performance regime, it raises the question why ORR was willing to diverge from the methodology on this matter? Simultaneously, ORR has stuck rigidly to the methodology for freight elements in the Schedule 8 regime, despite similar concerns being expressed about the dilution of incentives on Network Rail and the obvious impact of significant swings in the regime. For example, the 23% reduction in the FOC benchmark and 40% increase in the cancellation threshold are both planned to be implemented in full for CP7. DBC believes that an adjustment should be made to parts of the freight regime, in the same way it has been to the payment rates, to soften the significant financial swing and avoid dilution of the incentives on Network Rail to minimise cancellations to freight services. With regard to FOC performance benchmarks, freight operators have outlined to ORR through the recalibration working group that they consider it necessary to make an adjustment to the FOC benchmark to account for two things. Firstly, recent FOC performance levels have been significantly worse than the proposed CP7 benchmark, which is a consequence of the relatively historic period used for the recalibration exercise to avoid years impacted by the pandemic. Secondly, data provided by Network Rail to the recalibration working group indicates that there has been an 18% increase in FOC-on-FOC interactions during 2022/23, when compared to the 5-year recalibration period and this shows no signs of falling away during CP7, given the increased competitiveness and diversification present in the market. Whilst ORR has been clear that the threshold for making any adjustments to the recalibrated numbers in PR23 has been set high, the threshold has never been articulated and there is now precedence for adjustment following ORR’s decision to change its approach to the TOC payment rates in the Schedule 8 regime. Freight operators would like to understand why ORR deemed that the evidence presented by freight operators did not meet the threshold for adjustment and would urge ORR to reconsider this view following the change in approach concerning TOC payment rates. It is right that the FOC benchmark is set at a level which incentivises freight operators to invest and innovate in order to limit the impact of their services on network performance. However, in setting a benchmark at a level that fails to account sufficiently for current performance levels and which show few signs of sustaining improvement, freight operators are unlikely to achieve their benchmark in many periods during CP7. This will have a significant financial impact and risks damaging the commercial viability of some flows, in turn hampering growth in rail freight. ORR should take an overview of all the parameters of the regime in its Final Determination in order to ensure a clear line of sight with the freight growth target. It is crucial that decisions around Schedule 8 are taken holistically and are consistent with other levers at ORR’s disposal, such as unwinding of caps on charges. Policy objectives require consistency to avoid elements of PR23 pulling in opposite directions. More generally, DBC is concerned that discussions regarding the freight and Network Rail benchmarks have not occurred concurrently. Instead, ORR has indicated its intention to press ahead without any adjustment to the freight operators’ benchmark, while discussions concerning the Network Rail benchmark continue, with limited visibility for operators. Such an approach does not allow freight operators to consider the impact of the Schedule 8 regime in CP7 in totality. DBC observes that the Network Rail freight benchmark has not been adjusted for the forecast reduction in network mileage, whereas other elements of the regime have been, The proposed target based on 5% FCaL for CP7 compares with an equivalent FCaL target of 5.23% in CP6. If the CP6 FCaL target was adjusted for the forecast reduction in CP7 mileage, the Network Rail benchmark would be equivalent to 4.89% FCaL. This effective softening of the Network Rail benchmark in CP7 is inconsistent with industry ambitions for a high-performing and reliable network and we ask that more ambition be applied. To ensure that the approach to benchmarking is conducted consistently, DBC believes the Network Rail benchmark should be adjusted accordingly.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

DBC is content that the CP6 financial framework remains largely fit for purpose and limited changes are required. This is because the CP6 framework reflects the fact Network Rail is a publicly funded body and this has not changed. The overall decisions on the financial framework are subject to the approval from the DfT and Transport Scotland as funders of Network Rail's settlement. PR23 is taking place within a challenging economic environment, with inflationary pressures unlikely to subside by the time CP7 commences. It is therefore key that ORR monitors Network Rail's finances closely to ensure it is operating efficiently and able to deliver on the commitments as set out within its Strategic Business Plans (subject to amendments in the Final Determination). Where wider economic circumstances mean that Network Rail is unable to deliver on any of its commitments, this should be communicated promptly to operators, including freight as their primary customers. It is appropriate that ORR continues to monitor the capital costs ahead of the Final Determination to ensure that it remains appropriate within a volatile economic environment. ORR should closely monitor Network Rail's cost efficiency and require recovery plans if it is falling short.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

DBC has no strong view on this element of the policy and would be content for it to be retained without change.

Any other comments on managing change.

DBC supports the proposed managing change policy and recognises that it has not changed substantively from the CP6 policy. Freight operators value certainty and a stable regime to underpin investment decisions. It is therefore important that changes are limited and where material, subject to scrutiny through industry consultation. A mechanism which provides flexibility for ORR to allow adjustments to Network Rail's plans and how these are regulated during the Control Period to reflect changes to the industry or wider economic environment is understood. The proposal to reduce the number of levels of change from four to three in CP7 appears reasonable. As outlined in the response to Q4. DBC supports the outcomes framework and the success measures proposed to monitor Network Rail's performance. It is noted that through the managing change policy, changes could be made to the baseline trajectories or methodologies used to calculate these headline measures. Changes should not be taken lightly as this risks undermining the effectiveness of the framework in holding Network Rail to account. It is vital that this mechanism is not used to re-baseline for poor performance. Whilst there is merit in having a limited number of success measures to ensure appropriate focus and accountability for delivery, it may become clear during CP7 that the infrastructure manager is falling significantly short on some of the supporting measures within the framework. Where this affects delivery of services for freight and/or passenger services, ORR must be able to use the managing change policy to escalate measures.

13. Are there any other comments you would like to make?

DB Cargo welcomes the opportunity to respond to the ORR's Draft Determination document. It looks forward to continuing to work with ORR and the rest of the industry to take forward any changes ORR decides to make in its Final Determination.

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data

Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Consent

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Disabled Persons Transport Advisory Committee (DPTAC)

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

Disability affects over 14 million people in the UK. It includes physical or sensory impairments as well as 'non-visible' disabilities such as autism, dementia, learning disabilities or anxiety. For many disabled people a lack of confidence in using the transport system is a barrier to being able to access employment, education, health care and broader commercial opportunities, as well as enjoying a social life.

The Disabled Persons Transport Advisory Committee (DPTAC) was established by the Transport Act 1985 and is the Government's statutory advisor on issues relating to transport provision for disabled people. DPTAC's vision is that disabled people should have the same access to transport as everybody else, to be able to go where everyone else goes, and to do so easily, confidently and without extra cost.

DPTAC welcomes the opportunity to respond to this consultation. Although many of the issues dealt with through the Periodic Review process – the Schedule 4 and 8 arrangements for intra-industry compensation for instance – are outside the scope of DPTAC's work, there are other elements, which remain fundamental to the accessibility of the railway. The maintenance and improvements to stations is particularly important in this respect, as the Victorian-era legacy of much of the railway's built-environment remains a physical barrier to accessibility for many disabled people. In this context, we have focused our response to this consultation on question 5, which deals specifically with accessibility, itself in the context of section 12 of the 'Outcomes' document.

However, it is also worth making a wider point at this stage in the consultation around the importance of performance, in terms of train punctuality and reliability, to disabled people. Research has consistently found punctuality and reliability to be crucially important for all rail passengers, but we should emphasise the particular importance of performance to disabled travellers, who often face additional challenges and barriers when services are disrupted or cancelled.

In this context, we welcome the improvements to performance set out in the Draft Determination, but question whether they are sufficiently ambitious. For instance, the targeted improvement for on-time performance in England and Wales from the current 66.9% to 67.9% over a five-year period seems marginal at best (and compares very poorly with 92.5% target set for Scotland). We would encourage a further review of these targets, to determine whether a more ambitious and stretching set of targets might not be possible.

Finally, we should make clear that we are happy for our response to this consultation to be published.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

See our response to question 5 below.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

Se our response to question 5 below.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

See our response to question 5 below.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

Firstly, we welcome the explicit consideration of disability as part of the Draft Determination process. We are not aware that this has been the case previously and welcome the recognition that accessibility is central to many of Network Rail's activities.

Our response to this question has focussed on section 12 of the 'Outcomes' document, which deals with accessibility. We have a number of specific comments on section 12, which we have set out in bullet point format below:

- It is of very considerable concern that Network Rail Scotland has not included accessibility in its Strategic Business Plan. We welcome the ORR's intention to address this omission and do not believe that the Final Determination process for Scotland can be concluded until the omission has been remedied.

- We welcome the commitment set out in 12.9 for Network Rail to design all schemes in accordance with the Station Code. However, we believe that greater clarity is needed in this area. Our understanding of how accessibility improvements to the station estate are currently achieved is as follows:

    - routine maintenance and minor improvement work at stations must comply with the Code, which means that accessibility features must be included even

if they do not currently exist (this work is encompassed within the Periodic Review process);
    - more significant improvement work must also comply with Code, although it is unclear whether or not such schemes are included within the Periodic Review process;
    - all new build schemes (new stations or major extensions) must comply with the Code, although it is again unclear whether such schemes are included within the Periodic Review process or whether they are covered by separate funding arrangements (we have assumed the latter);
    - 'Access for All' schemes must also comply with the Code but are funded and managed outside the Periodic Review process.

- If our understanding is correct, it would be helpful to contextualise section 12 by including some new text to this effect. For each of the four categories highlighted above, there ought to be complete clarity on how the required accessibility elements of station work and schemes will be funded (either within the CP7 funding envelope itself or through separate funding arrangements).

- We have a strong linked concern with application of the Code, which is the lack of clarity around the body responsible for monitoring and enforcing compliance with the Code. Our understanding is that this is an ORR responsibility but, in practice, this activity seems to be undertaken largely by the DfT.

- Compliance with the Code has, in our perception, lacked clarity and been an area of relative weakness in recent years (although we have noted some more recent improvements), and we believe that a more transparent approach is needed. The ORR's Final Determination should make clear which body has responsibility for monitoring and compliance and how the results of this activity will be made available in the public domain, so that the relevant organisations can be held to account.

- In addition, over the course of CP7 we would like to see a proper certification process for the Code introduced so that works are not deemed complete until certified as such by the monitoring and enforcement authority, with any dispensations subject to a formal approval process (as is the case now). This would, in effect, mirror the existing (and largely effective) approach for rolling stock.

- As background to this point, we should also note that we believe there is a very strong case for reform of the current regulatory framework for accessibility on the railway to combine its various, currently disparate, elements into a single, coherent regulatory code with clear responsibilities for monitoring and enforcement.

- For instance, it makes little sense for the new PRM NTSN to remain part of the Railways (interoperability) Regulations (RIR) when its purpose is quite different to other elements of the RIR framework. The Station Code itself is the subject of some ambiguity in terms of its enforceability (being an amalgam of requirements from various sources including the NTSN) and compliance with the post-Review revised Station Code would benefit from being an explicit requirement in the planned new National Accessible Travel Policy.

- Again, in the context of the Station Code, section 12 makes no mention of three important developments that Network Rail needs to make explicit provision for. Firstly, the Station Code itself, is the subject of a current DfT-led Review, for which an industry and public consultation is about to begin. It is clearly impossible to pre-judge the outcome of the Review but its potential impact on the funding envelope needs to be acknowledged if, for instance, new accessibility requirements emerge. A linked issue is the RSSB-led review of the PRM NTSN, which is close to conclusion, and which may also drive new accessibility requirements.

- Secondly, the results of the DfT-led Accessibility Audit of stations will be available to Network Rail during the course of CP7. This will provide a wealth of detail on current station accessibility, which can be used by Network Rail when designing future station schemes. This ought to be explicitly stated in the ORR's Final Determination and there should be monitoring on Network Rail's use of the Audit data during the course of CP7.

- Finally, the planned National Rail Accessibility Strategy ('NRAS') seems likely to be finalised and published during the early stages of CP7 and may have some impact on accessibility requirements at stations. Again, it is impossible to pre-judge the content of the NRAS, but the likely publication of the strategy and its possible impact ought to be referred to in the ORR's Final Determination.

- In overall terms, the points highlighted above add a degree of uncertainty and risk into the Determination process, and which may require some flexibility during the course of CP7. It would seem sensible for the ORR to make explicit reference to these risk factors in its Final Determination.

- We welcome the various improvements set out in sections 12.10, 12.11, 12.15, 12.16 and 12.17. The explicit commitment of Network Rail to provide 'turn-up-and-go' assistance at its stations is particularly welcome, particularly given that its stations are the largest and best staffed on the rail network.

- In terms of tactile paving, we note the commitment to complete the current programme of platform edge tactile edge fitment by April 2025. However, our understanding is that at the end of this programme, there will still be a number of stations where platform edge tactile paving has not been fitted. If our understanding is correct, there should be specific reference to this in section 12.14 with an estimate of the number of stations affected and a plan to address the issue. The data needed to complete this evaluation should be readily available from the station Accessibility Audit data previously referred to.

- In terms of CP7 reporting, as discussed in 12.19-12.21, we believe that there is a strong case for the ORR to publish data on station schemes and their compliance with the Station Code, noting where improvements have been made or dispensations granted.

- We also note the planned introduction of a national customer satisfaction survey for the rail sector to replace the current National Rail Passenger Survey and Wavelength Survey. This new survey, which should be available from the start of CP7, ought to provide the basis for much better monitoring of disabled traveller's satisfaction with journeys on the rail network, including their use of stations. The envisaged sample size also ought to make some specific evaluation of the impact of larger station improvement schemes possible as well. Reference to the possible exploitation of this new evidence source ought to be included with the ORR's Final Determination.

- Finally, we should highlight the important link between accessibility and safety. Tactile platform edges, for instance, make the railway both safer and more accessible for blind and sight-impaired passengers. We would strongly advocate that the specific needs of disabled travellers are explicitly considered when safety is being assessed (if this is not already the case), noting that this principle applies not just to stations but many aspects of railway operations, as well as level crossings and footbridges.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

This question is outside the scope of DPTAC's work.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

This question is outside the scope of DPTAC's work.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

As already noted in our response to question 5, there is a strong link between accessibility and safety. Tactile platform edges, for instance, make the railway safer and more accessible for blind and sight impaired passengers. In this context, it is important that safety risk assessments and the approach to safety more generally explicitly take into account the specific risks faced by disabled travellers.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

This question is outside the scope of DPTAC's work.

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This question is outside the scope of DPTAC's work.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

This question is outside the scope of DPTAC's work.

Any other comments on managing change.

Click or tap here to enter text.

13. Are there any other comments you would like to make?

We have no further comments.

Thank you for taking the time to respond.

Annex A: Publishing your response

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Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

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- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
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OFFICE OF RAIL AND ROAD

PR23 draft determination consultation: pro forma

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Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: First Rail Holdings

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

Despite the apparent satisfaction of the ORR that the constrained funding does not need to result in undue concerns for the safety of assets or performance during CP7, we have not seen the supporting detail, including risk assessment and analysis, which underpin NR's asset management and maintenance plans and we are therefore very concerned about the potential catastrophic impact to safety and operational performance associated with deteriorating asset condition in CP7. We are concerned that substantial risks remain, despite the increased risk provisions in the Draft Determination.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

It is disappointing that a “patch and mend” approach seems to have been adopted. It is fair to say that the Regions have struggled to match their need for funding with the funds available and, given what has occurred in CP6, some of the general maintenance assumptions for CP7 seem to border on the “heroic” side. Where the ORR has determined that the proposed expenditure was inadequate, the increases proposed in the draft determination are very much welcomed. As far as the System Operator is concerned, we are worried about the progress and co-ordination of ITTS and welcome the decision to include projects under the ITTS as a Tier 2 supporting measure for the SO. This is key to improving the long winded SOAR process.

3. Our review of Network Rail’s stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

While NR have engaged positively with our TOCs, there has been some understandable lack of detail as to the individual effects at Route level. This has been further affected by the Draft Determination changes to regional settlements, where, to give one example, it is unclear how the increased spending for Southern, will affect the lines on which SWR run. We would also like to understand in more detail how NR will be managing the direct safety and performance risks through the market-led approach to asset intervention.

4. Our review of Network Rail’s proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

We agree that NR's "On Time" and Passenger Cancellation forecasts are not sufficiently ambitious, and the targets need to reflect more stretching trajectories, in some cases making use of the Performance Improvement Funding to achieve them.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

The continuing commitment to completing the tactile paving programme is welcomed but the lack of progress on "step free" is of concern. Relaying opportunities should be utilised to maximise the normalisation of track/train/platform interfaces with appropriate monitoring of progress.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

No comment

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

No comment

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

This is the most concerning aspect of the draft determination. The statement that NR has not yet demonstrated the shift in risk is extremely worrying. For those who experienced the change in maintenance regime for traction and rolling stock on BR in the late 1980's under the CEM scheme, this feels like a repeat. That scheme led to a marked deterioration in older assets, leading in at least one case to a fatality, and a huge and expensive increase in workload for Level 4 maintenance depots. In any new scheme like this, the need for pro-active examination and timely execution of repairs arising is crucial and the lack of detail as to how this is going to be achieved with the current settlement is concerning. The market led approach and how SFAIRP is going to be applied in a non-discriminatory manner is also awaited with interest, as is how the ORR is intending to pro-actively monitor and enforce in this area.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

FirstGroup supports the decisions on ICC for CP7 and supports the expansion of the qualifying criteria to include airport services. We note the VUC changes have, in part, been driven by lower passenger train forecasts for CP7. That assumption may prove to be pessimistic. We cannot comment on the Station LTC and QX charging except to state that, to date, details for individual increases have been somewhat opaque and we await the final figures with interest.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

We have engaged with the ORR at both TOC and owning group levels on the cross-industry work on methodology for NR payment rates. As is well documented, the originally proposed semi-elasticity approach would have resulted in extraordinary reductions in NR payment rates. We have informed the ORR that these reductions would have resulted in a very significant reduction to the economic incentives on NR to maintain the network to an appropriate degree, and in addition would have created perverse incentives with regard to service regulation during disruption and service planning during engineering works. The scale of the originally proposed reduction was so great that we were concerned with the ongoing orderly operation of the railway. We remain of this view, and welcome the attention that the ORR has paid to our concerns.The ORR has recently proposed an alternative to the originally proposed methodology (see “Schedule 4 & 8 Passenger Recalibration Working Group: 10 August 2023”, copy attached), being a methodology throughout CP7 that is between the originally proposed and the CP6 approach. We agree that this is the safest of the possible approaches considered by the ORR to address this matter. For the avoidance of doubt, we remain of the opinion that the NR payment rate methodology should be closer to that used in CP6 than in the ORR's "50%" proposal, in order to preserve orderly operation of the railway. In any case we absolutely believe that the payment rates must be no lower than those that would result from the 50% methodology.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

We consider that the improved monitoring of financial risk is an area that needs strengthening, both at NR and ORR levels. We look forward to seeing more on this in the final determination. We would also like some assurance that the individual CP7 risk provisions are adequate, especially in relation to weather extremes.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

The proposed threshold seems adequate for the purpose of the policy

Any other comments on managing change.

Although TOCs are not usually affected in the short term by such changes, we still wish to be consulted, where appropriate, to assess any long-term effects.

13. Are there any other comments you would like to make?

None

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Consent

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Freightliner Group Limited

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

Freightliner welcomes the opportunity to comment on the Draft Determination and we have provided detailed responses to the specific topic areas in answers to the questions below.

We welcome confirmation that both freight growth and freight cancellations are to be Tier 1 success measures for CP7. This recognises the significant environmental and economic benefits that Government and other stakeholders want to see delivered by growing rail freight volumes, as well as the need for a high-performing and reliable railway.

However, prior to the Final Determination we ask that ORR ensures that decisions around access charges and the recalibration of the incentive regimes are fully aligned with these over-arching objectives. The significant negative financial swing in the freight Schedule 8 regime, together with headwinds including increasing charges to access off-network locations and the extraordinarily high EC4T rates, need to be considered in the round with decisions on track access charges, to ensure consistency with wider policy objectives.

We ask that the ORR considers the alignment between these different aspects prior to the publication of the Final Determination and suggest that there is perhaps more latitude that can be applied - for instance setting charges on a long-term efficient level, or unwinding caps over much greater time periods. We understand that the current proposal of unwinding the PR18 cap to the end of CP7 has been signalled for some time. However, circumstances are materially different and more recent headwinds in terms of costs and ambitions to see rail freight growth (noting that is a Tier 1 measure) mean that this policy should be reviewed to ensure compatibility. The c18% real terms increase in variable freight charges in CP7 will impact on the competitiveness of rail freight and we ask ORR to consider the alignment against the Tier 1 measures.

There remain outstanding questions with regard to the incentives regimes - for instance in relation to the setting of the TOC payment rates, which have a significant impact on aspects of the freight performance regime, and in relation to the calculation of the Schedule 8 Benchmarks. We have significant concerns about setting TOC payment rates higher than the updated evidence suggests as to do so would be to the financial detriment of the freight operators. We understand that part of the rationale for setting the rates higher than the evidence is to minimise the swing, however a similar approach has not been adopted in the freight regime where there are other significant swings. For instance, the 23% reduction in the FOC Benchmark and 40% increase to the cancellation threshold are both planned to be implemented in full for CP7. We ask that should the updated TOC payment rate not be implemented in full in CP7, that a consistent approach is taken to freight parts of the regime to minimise what would otherwise be a significant financial swing. To implement the recalibration of the freight parameters in full but not to do so for the TOC payment rate will be to the financial detriment of the private sector freight operators. Further details are provided in answer to question 10, in which we suggest further clarification and additional work prior to the Final Determination.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

Freightliner notes the ORR's commitment to measure the full scope of the System Operator's (SO) activities in CP7. We welcome the confirmation that the ORR will set point targets rather than measure against the ranges provided in the Network Rail Strategic Business Plans (SBPs). Specific targets provide clarity to industry and accountability on delivery, which risks being diluted by the use of ranges. We specifically welcome the inclusion of point targets for freight growth and the freight cancellation in CP7.

Freight growth remains a key priority for the industry and Government. The "Plan for Rail" White Paper outlined aspirations for rail freight growth and committed to the development of a long-term growth target. We are expecting that this target will be set in Autumn 2023. We therefore welcome the inclusion of the 7.5% rail freight growth target as a Tier 1 measure for CP7. While Network Rail won't be delivering the growth, the System Operator, along with the Regions, will play a fundamental role in the ability of freight operators to grow volumes - including through the management of capacity, capability and engineering access across the network, the provision of a high-performing and reliable network and by supporting customers with affordable connections.

We also welcome the focus on freight cancellations in CP7 and the setting of the point target in this area. The current levels of cancellations are much too high and the disruption that rail freight operators and customers have endured over recent years must improve if rail freight is to achieve its potential. While we have concerns that the freight cancellation target of 1.2%, and the wider performance targets, are not sufficiently ambitious, we welcome the inclusion as a Tier 1 measure. Further information is provided to response to question 10.

Freightliner strongly supports the additional £72 million funding for high priority structures to support the maintenance of heavy-axle weight (HAW) capability on core routes in CP7. Running at HAW is essential for the economics of many bulk flows and the challenges in this area in CP6, where Routes have introduced restrictions on the sale of any new HAW access rights, has created significant uncertainty in this area. It is important that this funding pot targets the key priority structures and addresses the on-going uncertainty around the sale of new HAW access rights in certain Routes. Along with ORR's on-going monitoring of network capability, it is essential that there is a strong focus on how this money is being spent and benefits that have been unlocked.

The Draft Determination rightly recognises the importance of maintaining network capability for freight and identifies some of the recent challenges in this area, including with the maintenance of published gauge capability that has impacted on the ability to introduce new services for customers. As such we strongly support the ORR decision to monitor ‘capability non-conformance’ in CP7. This will not only provide a tool to better hold Network Rail to account on network capability but also should support Network Rail in their approach to network management.

3. Our review of Network Rail’s stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

As noted by the ORR in Regional settlement documents there were different approaches taken by the Regions and the System Operator in relation to stakeholder engagement. Some of the challenges in engagement were caused by delays in the publication of the SOFA and the HLOS, which knocked onto the finalisation of Network Rail SBPs and limited the amount of time that operators had to discuss those SBPs with Network Rail.

That said the Network Rail freight team within the System Operator did an effective job at gathering key stakeholder priorities at an early stage and ensuring that they were incorporated into the Regional plans. As such there was good consistency between the Regional plans, for instance recognition of the requirement to maintain HAW capability and the need to focus on reducing freight cancellations, as well as the over-riding aspiration to secure freight growth through modal shift. We welcome that the priorities are consistently represented within each Regional plan.

This national approach is important for the freight operators, which cross-border all regional boundaries. While limited resources often mean that we cannot attend all of the Regional engagement sessions, it is crucial that there is a consistent feed from the freight team within the SO to ensure alignment of priorities. This largely worked well in PR23 and we suggest should be a model for future Periodic Reviews.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

Freightliner supports the proposed outcomes framework. The focus on the two Tier 1 measures with a suite of supporting Tier 2 and Tier 3 measures is welcome. We do not consider it to be necessary to report the Tier 2 and Tier 3 measures. Those measures will largely be inputs into the Tier 1 measure, so will provide useful and potentially indicate issues with the delivery of the key success measures.

We are particularly pleased that ORR has confirmed that freight growth will be a Tier 1 success measure for CP7. Freight growth remains a key priority for the industry and Government, as laid out in the Plan for Rail and subsequently in the HLOS, and the inclusion of a national 7.5% target for England and Wales and an 8.7% target for Scotland, with disaggregated regional targets, should provide scrutiny and accountability of delivery. While Network Rail won't be delivering the actual growth, experience from the CP6 freight growth target in Scotland shows that the infrastructure manager plays a key role in the ability of freight operators to deliver growth. Therefore, it is right that this is included as a Tier 1 measure. We also support the use of tonne kilometres as the metric to track growth, as it is an indicator that considers both weight and distance moved and is already reported on regularly by Network Rail and ORR.

Freightliner welcomes the focus on freight cancellations in CP7 and the inclusion of freight cancellations as a Tier 1 measure. The current levels of cancellations are much too high and the disruption that rail freight operators and customers have endured over recent years must improve if rail freight is to achieve its potential. While we were disappointed with the performance forecast ranges in the Network Rail SBPs and considered them to be much too unambitious, we welcome that the ORR has set a target that is not at the pessimistic extreme of those forecasts. However, for the reasons outlined in the performance section of this response we do not consider the performance targets to be sufficiently challenging and we outline how ORR should consider a further stretch in this area.

Freightliner also supports the inclusion of asset sustainability as a Tier 1 measure. The messaging in the Network Rail SBPs was concerning and therefore it is right to maintain a core focus on this in CP7. The additional £72 million funding for high priority structures to support the maintenance of HAW capability is welcome. However, it is important that this funding pot targets the key priority structures and addresses the on-going uncertainty around the sale of new HAW access rights in certain geographic Routes. Furthermore, we also support the ORR decision to monitor 'capability non-conformance' in CP7, given some of the well-documented challenges in this area in CP6.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

No comment on this section.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

Freightliner welcomes the funding envelope provided in the Statement of Funds Available (SoFA), which represents a real terms funding increase on CP6. While the challenges and headwinds are noted, it is important that Network Rail builds on the efficiencies that it has successfully delivered in CP6 and targets further efficiencies, some of which should be unlocked with industry reform. The SBPs identify the further use of technology and remote monitoring to offset some of these headwinds, and therefore we consider that Network Rail could be more ambitious in its performance and reliability targets, and ultimately in its delivery to customers.

We support the ORR's view that the increasing impact of climate change requires a greater focus on structures at risk and drives the need for flexibility to reallocate funding to reprioritise renewal activity accordingly. Network Rail highlights how funding challenges could impact on the split between maintenance and renewal and how they may have to make use of more operational measures to mitigate the lower than necessary renewals expenditure. While we do recognise that there will be a need to introduce temporary speed restrictions across structures on occasion, Freightliner would be strongly opposed should any operational measures reduce capability for freight to offset a reduction in maintenance or renewal activity. That includes any loss in Route Availability, where freight operators are required to reduce tonnages over lines of route. Maintaining Route Availability, including HAW capability where there are dispensations in place, is essential for the economics of rail freight and implementing any reductions in capability must not be seen as a mitigation measure.

The inclusion of asset sustainability as a Tier 1 measure, the ring-fenced HAW capability fund and the Performance Innovation and Improvement Fund are all to be welcomed and we consider should act to offset some of the headwinds around renewal activity and asset degradation. A high-performing and reliable railway is essential for rail freight to grow and to secure modal shift and therefore it is important that Network Rail is able to fully use these funds, capitalise on new technology and improve flexibility to address some of the challenges that they have outlined in their SBPs.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

No comment on this section.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

Freightliner recognises the strong safety performance of Network Rail in CP6 and its commitment to continuing to improve safety processes into CP7.

We fully support the objective to improve and update the Health and Safety Management System and Information Systems, increasing the visibility of the "Safety Leaders" initiative, and encourage more detailed dialogue between stakeholders in improving best practice. We would encourage the £138 million to be invested in technology to focus on workforce protection to reduce the impact that line blocks and possessions are creating for freight operations following the elimination of routing red zone working.

We fully support the planned investment in public safety and encourage cost effective technological solutions which are required to expedite the removal of level crossings and the associated risks. Freightliner supports the planned investment in workforce safety but highlight the need to consider cost effective solutions and incremental improvements in all areas of operational risk, rather than "gold plating" some specific areas. We look forward to engaging with NR and ORR in developing the Workforce Health and Wellbeing strategy, in particular refining industry standards to support an inclusive culture.

We are concerned about the FSIP reduction from £22 million to £17 million, however we welcome the inclusion of some definitive criteria for allocation of funding under this scheme. We fully support prioritisation of funding for projects linked to the industry Freight Safety Programme, application of technology for risk reduction, and particularly the allocation of funding to support levelling up across the freight community following successful proof of concept projects involving single operators. We feel that this will ensure a fairer and more effective allocation of available funding to drive overall risk reduction.

We support ORR in seeking greater understanding of how Network Rail will demonstrate the management of any shift in risk profile between renewals and maintenance-based approaches to infrastructure. We would encourage engagement with industry to consider how assets prone to the effects of climate change can be utilised safely and effectively. For example, assessing risk profile for freight and passenger services independently in respect of flooding of the line or wind speed restrictions.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

Freightliner remains concerned about the recalibration of access charges in CP7. We are concerned about the lack of alignment between the recalibration process and 1) the wider policy objectives, particularly the Tier 1 rail freight growth target and 2) the financial impact that the negative swing in the Schedule 8 recalibration will have on the sector. We discuss the Schedule 8 recalibration further in Question 10, however we ask that prior to the Final Determination, that ORR consider the financial impact of all decisions taken in the periodic review in the round and considers that impact of those decisions against wider policy objectives, before decisions are finalised on the approach to charges and incentives

CP7 will see significant real terms track access charges for most freight vehicles on the network - with an average real terms increase of 18%. While these increases are the result of decisions taken in PR18, we had previously suggested it necessary to change tack, particularly in light of the desire to see strong rail freight growth and uncertainty of Rail Reform. We ask ORR to review this decision given the materially different environment. The c18% real terms increase in variable freight charges in CP7 will impact on the competitiveness of rail freight and we ask ORR to consider the alignment against the Tier 1 measures.

A further option, to overlay a long-term efficiency target on Network Rail and to set the variable charges based on that long-term target - similar to the approach taken in PR08/PR13 - would have also addressed some of the challenges that the freight sector is facing with charges in CP7. With Network Rail having taken good strides in CP6 to improve efficiency levels and with Rail Reform likely acting as a catalyst for further efficiency, setting charges in CP7 against a long-term efficiency target could have acted to mitigate some of the steep increases now expected in CP7, whilst also being consistent with overall direction of travel and aligned to overall policy objectives. We ask ORR to reconsider this ahead of the Final Determination.

Freightliner is also concerned about the outcome of the PR23 charges recalibration that has resulted in an average 13% additional real terms increase in Variable Usage Charges (VUC) in CP7. While it is to be welcomed that the ORR has decided to cap this increase in CP7 and introduce the further increase in CP8, this decision merely moves the cliff-edge and the uncertainty that it creates risks impacting on investment across the sector. The damage to confidence again raises questions around how this aligns with growth aspirations.

Notwithstanding the concerns above, the Draft Determination states that this average 13% increase in VUC is the result of two factors - 1) increase in Network Rail's cost base and 2) reduction in forecast network mileage in CP7 against what was forecast in PR18. We remain unclear about how network mileage changes would impact on freight VUC given that the charge is designed to recover the wear and tear of that train on the network. The absence of other trains on the network should not change the wear and tear of a different train. It would be more understandable if VUC was set on a long-run marginal basis that pulled in renewal costs. But we understand that VUC is set on a short-run marginal basis, consistent with the Access and Management Regulations and accompanying implementing act provisions, and therefore it is unclear why this is a driver for the increase. While the decision to cap the further increase in CP7 has mitigated the current risk, the underlying rationale does need to be resolved given the cliff-edge it has created.

The second driver for the average 13% increase in VUC is identified as being the increase in Network Rail cost base. We do understand the inflationary environment that has contributed to this, but suggest as above, that was a long-term efficiency overlay to be applied to Network Rail costs and should the VUC be set against that long-term efficient level, then some of the volatility that we are seeing play out through the charging reviews could be avoided. As is the case with the unwinding of the PR18 caps in CP7, we ask the ORR to reconsider whether there is scope to overlay a long-term efficiency target on the freight charges recalibration.

It is crucial that the cliff-edge that has been created for CP8 with the policy decision to cap charges in PR23 gets resolved quickly in CP7. We understand that the average 13% increase in VUC does impact on some vehicles more than others and we are waiting to see the full impact of this with the forthcoming publication of the uncapped price list. Further unwinding of this additional cap in CP8 will damage the sector and impact on growth, while in the short-term it risks hindering investment. It is crucial therefore that this issue is resolved quickly, and the uncertainty does not linger through to PR28. We ask ORR to confirm that early discussions will be had in CP8 around this cap with a view to address the cliff-edge and provide confidence to the sector. It is crucial that decisions around charges are taken holistically and consistent with other policy objectives, such as rail freight growth, in order to avoid aspects of the periodic review pulling against each other.

With the exception of limited coal movements, Freightliner does not currently operate in the markets identified for ICCs and so does not have visibility of the market economics required to understand its ability to bear a mark-up. However, it does remain important that any decision to apply ICCs on these commodities should not be made based on historic investment, leading to this traffic now being perceived as captive. To do so would risk undermining future investment. We welcome the decision to reduce the ICCs to offset the corresponding rise in VUC rates, albeit we understand that a different approach is being taken with biomass. We do not transport that commodity, so cannot comment on the specific economics of that market but would again emphasise that decisions around ICCs for biomass should not be taken based on historic investment. To do so would risk jeopardising future investment.

We note that the ORR has changed its approach with coal and now intends to maintain ICCs for that commodity given the slight uptick in movements. The previous proposal to remove the ICC for ESI coal was based on ‘proportionality grounds’ and we would again suggest that given how few commodities can bear a mark-up, as a result of high levels of substitutability across most rail commodities, the freight ICCs make only a small contribution to Network Rail income, raising the question over whether ‘proportionality’ should be more widely considered.

In summary, we ask that ORR reconsiders its approach to the unwinding of the PR18 cap in CP7 and to take steps early in CP8 to address the cliff-edge that has been created by the decision to cap the additional VUC increase. For rail freight to grow and, in doing so, deliver the significant environmental and economic benefits that Government and other stakeholders want to see delivered, it is crucial that charges are set at a level that supports this ambition. While we do understand that there are regulations that must be adhered to on rail when it comes to charging methodology, we ask ORR to consider whether they have more latitude in this area - for instance setting charges at a long-term efficiency level, or unwinding caps over much greater time periods. The current proposals are not conducive to securing modal shift, and this is further exacerbated by other increases in charges paid by freight operators - including accessing off-network locations and the extraordinarily high EC4T rates. As an example, such additional costs have contributed to rail freight overall share of Port of Southampton hinterland movements, decreasing from 35% to 24% over the last decade. Indeed, road hauliers continue to benefit from a stable policy position, including where fuel duty has not increased in over 12 years. The economics of rail freight are difficult with high substitutability across most commodities and therefore it is important that the periodic review considers this and aligns it to the growth aspirations. We recognise that modal shift is noted in Network Rail’s Strategic Business Plan (SBP) as one of the UK Government;s five long term strategic objectives for rail, and the SBP does outline an encouraging suite of investments and initiatives to improve freight performance in order to encourage greater rail utility. But the role of VUC charges in significantly influencing rail commercial attractiveness needs to be addressed.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

The recalibration of the Schedule 8 regime has resulted in a significant swing in most of the measures against freight operators - including a 23% fall in the FOC Benchmark and a >40% increase in the cancellation threshold. This swing will have a financial impact on the freight sector and while the operating environment does not itself change as we move from March to April 2024, the calibration of the incentives do change significantly. We are concerned that this swing and the resulting financial impact on the sector has not been considered when making decisions on other aspects of the periodic review, including the approach to charges and the capping policy. Ahead of the Final Determination and before decisions are finalised on the approach to charges and incentives, we ask that ORR consider the financial impact of decisions in the round, and consider that impact against wider policy objectives, for instance growth.

In terms of specific aspects of the recalibration, Freightliner has some concerns about several aspects of the Schedule 8 recalibration process for CP7, which we consider need addressing ahead of the Final Determination. These are identified below.

Payment rates

While the freight operators have not been privy to the detail of the work, we understand that research from Systra and Steer has updated the elasticity demand estimates to recalculate the TOC payment rates. While the outputs were signed off by the working group, the implementation of the new rates remains under consideration due to concern by some operators that the new evidence will substantially reduce their payments. This is an important issue to the freight operators as the TOC payment rate is the key input into the FOC payment rate and will also underpin the calculation of the revised Incident Cap Access Charge Supplement.

We understand that following representations from passenger operators, the ORR is now minded to introduce payment rates that are higher than the updated evidence has calculated, but lower than the current rates. Freightliner would be concerned about establishing TOC payment rates that are higher than the evidence suggests. To do so would lead to freight operators overpaying for the cost of the delays that they cause. Payment rates should be set at a level that recovers the cost of the delay; not more than that.

Under current arrangements we understand that most TOCs are not currently exposed to the Schedule 8 performance incentives and instead Schedule 8 operates as a pass-through to Government. Therefore, to set the payment rates higher than the evidence suggests, would in effect be a penalty on the private sector freight operators. It would represent a payment out from FOCs to Government, in excess of the actual cost of the delay that has been caused. This cannot be a desired outcome for any party.

Higher payment rates would also mean that the cost of capping incidents would be too high, as the payment rate flows through to the calculation of the Incident Cap Access Charge Supplement.

We are also concerned that the approach taken with the TOC payment rates is inconsistent with aspects of the freight recalibration process. Throughout the recalibration of the freight Schedule 8 regime, the operators have been told that the threshold to reopen any aspects of the recalibration is high. Freight operators have repeatedly asked that parameters are reconsidered and have provided new evidence to support our position - 1) in the setting of the FOC Benchmark and 2) in the setting of the cancellation threshold. In both instances the FOCs were told that given the high threshold and the burden of evidence required, these parameters would not be reopened. This was despite a sharp fall in the FOC Benchmark (23% reduction) and a very significant increase (40% increase) in the cancellation threshold.

We ask that should the updated TOC payment rate not be implemented in full in CP7, that a consistent approach is taken to freight parts of the regime to minimise what would otherwise be a significant financial swing. To implement the recalibration of the freight parameters in full but not to do so for the TOC payment rate will be to the financial detriment of the private sector freight operators - indeed the significant reduction in the FOC Benchmark is further exacerbated by the setting of TOC payment rates that are higher than the evidence.

Benchmarks

FOC Benchmark

Through the recalibration working groups, Freightliner has sought adjustments to the FOC Benchmark to ensure that it is representative of expected performance levels in CP7. The current methodology is based on some historic data and although that cannot necessarily be avoided given the impact of Covid on more recent datasets, it does mean that the sample period is not representative of the current market. We have previously provided detailed evidence showing an increase in FOC-on-FOC interactions and outlined how that drives the need to adjust the FOC Benchmark. Given the ORR's view that there is a high burden of evidence required to reopen any parameters and that the evidence provided did not meet this threshold, the adjustment has been rejected.

This means that the proposed FOC Benchmark of 2.39 delay minutes per 100 miles is a level that is not regularly attained by the FOCs. In fact, all-FOC data suggests that the proposed Benchmark has only been met in four periods in the last financial year. There is nothing to suggest that as we enter CP7 that this trend will change. It is the proposed reduction in the Benchmark to align with forecasted CP7 mileages that has caused a significant drop in the Benchmark and without the further adjustment to pull in the increase on FOC-on-FOC interactions will lead to the FOC Benchmark being set at a level that is too low and cannot be considered representative of expected CP7 performance levels.

This issue is exacerbated should the TOC payment rates be set at a level higher than the best evidence suggests, as to do so would over-recover against the modelled cost of the delays that have been caused by freight operators. This again demonstrates the importance of the FOC payment rate being set at the right level.

We ask ORR to reconsider the approach to the FOC Benchmark and the adjustment that has been sought, particularly to ensure consistency with the more flexible approach that appears to have been taken to reopen the discussion with the TOCs around their payment rates.

Network Rail Benchmark

Freightliner considers that the Network Rail performance target is not sufficiently ambitious for CP7. The proposed target of 5% FCaL compares against an equivalent FCaL target of 5.23% in CP6 (note in CP6 it was FDM, however this is the equivalent % with cancellations removed, as confirmed by Arup).

This reduction in the FCaL target is important - we continue to reiterate the need for a high-performing and reliable railway in order to secure modal shift to rail and industry growth. However, the new target does not adjust the current target in light of the CP7 forecast mileage reductions and therefore, holding mileage levels constant, would actually represent a less ambitious target than in CP6.

If the equivalent CP6 FCaL target was adjusted by forecasted mileage changes in CP7, then the Network Rail Benchmark would be the equivalent of 4.89% FCaL. The effective softening of the Network Rail Benchmark in CP7 is again inconsistent with industry ambitions to grow and we ask that this is reconsidered to at least ensure that CP7 forecasted mileages are fully reflected in the FCaL target.

Given that the FOC Benchmark was fully adjusted down based on the forecast CP7 mileage it is important that a consistent approach is taken with the Network Rail Benchmark and the equivalent adjustment is applied.

Mid-control period reopener

Freightliner notes the ORR's decision to introduce a mid-control period recalibration reopener. We understand the rationale for this, noting the impact that the pandemic had on the calibration of the various parameters. That said, it is important that the threshold for application is high, and it is not used to reward poor performance or punish good performance. Rather it should only be used to adjust for external factors that could not be foreseen during the periodic review.

Schedule 4

Freightliner generally supports the approach taken with regards to the Schedule 4 recalibration. We welcome the fact that the ORR's proposed approach to Schedule 4 recognises the limited bandwidth of the industry to engage across multiple issues and has therefore limited the number of changes. Freightliner agreed at an early stage that any changes should be proportionate and targeted, and limited to where there is a demonstrable value in doing so. Consequently, we agree with the outcome of much of the review that will retain the structure of the regime and uplift the rates with inflation.

While we understand the rationale for it with the likely reform of the railways, we do not consider the proposed opt-out mechanism for Schedule 4 to be a priority. That said, we note that is aimed at Government TOCs rather than private sector operators, and therefore is unlikely to be applicable to freight operators.

We do however remain concerned about the proposed 40% increase in the cancellation threshold and the message that sends out. This very significant increase in the threshold means that Network Rail can effectively cancel more trains before the higher rate of compensation is applicable. The threshold is designed to act as a pseudo-benchmark and was introduced to be an expected cancellation level, designed to incentivise Network Rail to minimise freight cancellations. The inclusion of freight cancellations as a Tier 1 measure is welcome, however this decision seems at odds with the steep increase of the threshold, which effectively risks giving the green-light that it is acceptable to increase freight cancellations. We ask that this is again considered to ensure continuity between the measures.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

Freightliner agrees that the CP6 financial framework remains fit for purpose and limited changes are required, given the position that the CP6 framework reflected Network Rail as a publicly funded body, which has not changed. It is noted that the overall decisions on the financial framework require the approval of the Department for Transport and Transport Scotland as the funders.

It is right that ORR monitors Network Rail's finances to ensure that it is operating efficiently and will be able to deliver on the commitments set out within its SBPs. We strongly support ORR's approach to compare the proposed cost of capital outlined in Network Rail's SBPs with the values used by other regulated sectors in the UK. This is essential in order to fully consider value for money.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

Freightliner is supportive of the of the proposed managing change policy, which is consistent with the approach taken in CP6. As private sector businesses, the FOCs will continue to value a stable regime which enables them to invest with certainty, therefore it is important that material changes are limited and, if material, subject to an industry consultation process.

13. Are there any other comments you would like to make?

Please do not hesitate to contact me if you would like to discuss any part of this response in more detail. I would be very happy to provide any further information or clarify any points as necessary.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Consent

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and

- ensure that the PDF's security method is set to no security in the document properties.

GB RAILFREIGHT: PR23 DRAFT DETERMINATION CONSULATION

ABOUT YOU

Full name: [Redacted]
Job title: [Redacted]
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GBRf RESPONSE

Q1: GENERAL COMMENTS ON ORR'S DRAFT DETERMINATION FOR NETWORK RAIL IN CP7

GB Railfreight (GBRf) strongly supports ORR's objective that the PR23 determination must push Network Rail to be customer-focussed, make effective use of its capacity to deliver freight services that are punctual, reliable and, most importantly, to become a low-emission and highly decarbonised railway.

This last point is particularly important to GBRf as it is now heavily investing in new state-of-the-art bi-mode locomotives to make its current and future services far more environmentally friendly. Network Rail must be made to actively promote this change in CP7, both from the point of view of having robust assets on its core freight routes (e.g., sufficient power supply for electrically-hauled freight) and also with an overall pricing mechanism to rapidly encourage such change.

GB Railfreight very much supports a new CP7 freight growth target for the UK, although this does not aim high enough, in our view.

However, GBRf believes certain elements of this draft determination do not go far enough and need to hold Network Rail to account much more rigorously and to a greater degree.

With regard to your "Draft Determination Key Proposals", a major concern is that of freight performance. GBRf believes the draft determination gives an extremely poor starting point for CP7, given how bad recent performance has been due to strikes, infrastructure and weather-related failures. The final freight benchmark and cancellations threshold need to be stretching for Network Rail, and from a high-performing starting point, as recent failures must not be rewarded. GBRf believes these thresholds must be revised to ensure the regime is accurately set up and that it gives the right incentives throughout the industry (see later section).

Quite how ORR believes that, in CP7, Network Rail will deliver no further decline in train performance, while spending less on renewals & core renewals, but "deliver improvements for passenger and freight customers" is not clear at all. It needs to urgently be made so.

GBRf needs the final determination to show all the details of how Network Rail demonstrates that it has full understanding of its assets in the first place, before it decides which renewals are to take place, as GBRf believes Network Rail does not have that full asset base knowledge.

There is, currently, a step-change upwards in the number of late notice possessions which cause many freight services to be substantially altered or cancelled at short notice. GBRf needs ORR to have a very clear picture of how such late-notice alterations and cancellations affect our UK-wide freight business, then set demanding measures on Network Rail for their reduction.

Nor should the CP7 baseline start with such a large amount of change being the "norm". The proposed strategy of programming lower levels of renewals and being heavily reliant on the "Modernising Maintenance" programme, are likely to create a wave of renewals in future years that are highly unlikely to be funded in full. This will surely lead to a continually deteriorating railway, with on-going bad effects for performance and growth.

With regard to the proposed increase in access charges, GBRf believes that the VUC increases (18% in CP7) have not been correctly calculated, given the fact that CP7 traffic levels are predicted to be lower than pre-Covid CP6 levels. As the VUCs should be set to recover the marginal costs for freight over the agreed service baseline at the start of the Control Period, such an increase cannot be right.

In more general terms, though, any overall effects of changes to CP7 access charges for freight must not bring down rail freight's ability to promote modal shift from road and pressing forward with a far greener rail industry. At the very least, that would also be inconsistent with attaining the new freight growth target. In no way does GBRf consider annual increases in Variable Usage Charges, through CP7, as supporting freight growth and our funder's wider objectives.

If Government and ORR are serious about a more environmentally friendly and greener railway, the effects of any access charge changes must not stop this taking place. Stimuli for freight growth are low access charges, greater network capacity for freight, a simple and incentivising EC4T charge and robust and predictable operating performance.

With regard to the proposed freight growth target, as well as it needing to be more stretching in number over the various routes (and especially Southern Region), GBRf needs to understand the principles of how Network Rail and ORR expects these targets to be attained against a declared reduction of renewals & core renewals and, for example, the expectation of temporary speed restrictions across the network.

How can ORR propose to agree an 11% reduction on spend for track, earthworks, and drainage (for example) given how many landslides there have been across the network? GBRf cannot see this being made to work and needs far more detail on how it would work and be safe for all.

Q2: COMMENTS ON OUR SUPPORTING DRAFT SETTLEMENTS FOR THE SYSTEM OPERATOR (SO), SCOTLAND AND ENGLAND & WALES REGIONAL DOCUMENTS

Eastern Region:

The Eastern Region is absolutely key to much of GB Railfreight's business, especially Anglia Route which handles all the UK's largest port's rail traffic. Elsewhere on the region, the East Coast Main Line and its branches handle great amounts of mixed freight traffic every hour, each day.

Having sufficient capacity and good performance for freight running over the whole Eastern Region underpins FOCs' businesses as it is, indeed, the backbone of the UK rail freight network. With that in mind, GBRf cannot see how ORR believes that Eastern Region can and will deliver consistent and highest possible freight performance with a 14.6% reduction in asset renewals and a forecast decline in asset reliability. This needs a detailed explanation please.

GB Railfreight welcomes the Eastern Region freight growth target of 7.5% by the end of CP7, along with the continuation of heavy axle weight permissions, however it believes that with the geography in question and with, for example, 13 freight ports on its patch, this target ought to be higher and greater growth readily achievable.

Critically, though, how is Eastern Region assuring ORR and the freight industry that increased electric freight can run over the East Coast Main Line (ECML), Great Eastern Main Line and other electrified routes? The lack of detail on this major issue needs addressing, especially as GBRf will be running additional electrically-hauled freight services on the ECML and Midland Main Line from 2025 onwards, in line with the Government's environmental agenda and ORR's current view on a low-emissions railway.

If there is not enough electrical power supply available for all types of service, it might be the case that an electric passenger services would need to be removed from the timetable to accommodate electrically-hauled freight. That is not inconceivable given how strategically important railfreight is to the UK national economy.

Also mentioned in the Freight Growth section, GB Railfreight does not understand what *"The Region states that it is committed to working with the freight community to maximise opportunities for freight paths"* means. A freight growth target of at least 7.5% means there needs to be more than words to make that a reality. GBRf welcomes more clarity here.

Regarding Eastern Region's asset sustainability, as it has not yet completed its procurement of framework contractors, GBRf cannot see how the numbers and proposals in the draft determination can currently be accurately considered. It is also noted that there are no maintenance plans in this draft determination and operators obviously would like sight of this detail.

In a similar manner to other regions, the reduced level of maintenance being proposed relies heavily on the implementation of the "Modernising Maintenance" programme being implemented however it is not clear whether or not this is definitely being taken forward (e.g., Union T&Cs etc.). If it not absolutely confirmed at this stage, what is the alternative plan for CP7 national maintenance?

Southern Region:
With regard to the Southern Region's projected freight growth, and with 32 active freight terminals on its patch, GBRf believes that a target of only 2.9% by the end of CP7 is extremely poor. This, surely, needs to be reviewed and increased as a target more in line with other regions.

GB Railfreight agrees with ORR's view that the proposed reduction in CP7 track renewals expenditure by ~30% is not acceptable. Not confined to this region, but all others as well, GBRf has a real concern that planned deteriorating track quality, with speed restrictions put in place, would lead to greater time loss for freight services that would then be regulated out of the way due to no fault of the FOC in question.

This is a dangerous spiral that could lead to often regulated "late" freight services becoming unreliable in reaching their destinations on time with sustained poor performance ultimately leading to loss of railfreight traffic.

North West & Central Region:
It isn't clear how the region expects to deliver good levels of train performance when it is stating it will not be able to maintain a steady state for infrastructure, with its assets declining. GBRf needs to understand how these two statements can align.

The region is stating that it expects to use high-output plant to support delivery of its WCML (North) programme however elsewhere in the draft determination it is stated that Network Rail is not planning to use any high-output plant throughout CP7. GBRf needs to understand which is true.

In a similar manner to Eastern Region, it is not clear that NW&C's decarbonisation plans will support more electrically-hauled freight services in CP7. GBRf will be running more electric freights from 2025 onwards and it isn't clear if key routes like the West Coast Main Line and its branches will have enough robust power supply to accommodate more electric freight, in line with the Government's environmental agenda and ORR's current view on a low-emissions railway.

If there is not enough electrical power supply available for all types of services, it may be the case that electric passenger services would need to be removed from a timetable to accommodate electrically-hauled freight. GBRf welcomes the freight growth target of 8.6% for the region.

Western & Wales Region:
GB Railfreight welcomes ORR's decision to limit the freight cancellations trajectory to 1.5% for each year of CP7 rather than the range up to 3.3% which would have been unacceptable. The freight growth target of 6.9% is lower than several other regions and GBRf cannot see much in the way of detail to achieve this growth figure.

Seeking to understand how to change the engineering access statement, on its own, will not bring about this level of freight growth. Far more clarity is needed on this point and exactly how the region intends to reach its freight growth target. Following recent incidents, GBRf is also not satisfied that the region clearly understands its assets and their conditions.

Scotland:
GB Railfreight welcomes the Scotland freight growth target of 8.7% by the end of CP7 however the ability to reach this figure is not in Scotland's gift alone and our worry is that the planning of rail freight capacity over the Eastern & North-West & Central Regions' lines might well hinder that Scotland growth figure.

Robust electrical power supply, in both England and Scotland, for both current and new electric freight services will also help achieve this figure as rail freight's customers also demand more environmentally friendly services.

Importantly, there need to be checks in place to ensure there is intelligent timetabling taking place in CP7, especially for cross-border services into/out of Scotland. This has not always been the case to date.

GB Railfreight welcomes a centralised System Operator-led approach for timetabling rather than anymore "local level" validation of Scottish freight and passenger for reasons of transparency, fairness of capacity allocation and there being the greater overall picture for validating long-distance, cross-border services.

GBRf also agrees with the more demanding freight cancellations target being set at 1.3% across each year of CP7. There is a concern regarding the proposed £380million of efficiency savings, given how high this number is. GBRf needs to understand the detail behind how this level saving can be made and what that might mean to the day-to-day (or nighttime) operations of the railway in Scotland, especially for freight.

System Operator:
Throughout this System Operator document, there is continual reference to the "ITTS" and "BTPF" projects. Each of these is not going ahead, for differing reasons, and tens of millions of pounds have been wasted with no benefits in the offing. Obviously, the whole strategy for System Operator will urgently need looking at again for ORR's final determination as it is very unclear how benefits such as improved data management, efficiency in timetable development and improved performance will now be delivered for CP7.

It also is not clear to GBRf what the System Operator's plans are *"to increase freight capacity and support the running of longer, heavier freight trains"*, especially *"…to focus on corridors and linking routes together…"*. Further detail needs to be provided so it can be adequately assessed.

When dealing with access rights applications, Network Rail's current internal processes need drastically speeding up and also need to have appropriate response times that fit with its customers' and industry's needs. They currently do not do so but need to.

GB Railfreight fully supports current Network Code timescales now, and in the future, for all timetable production processes. It gives many opportunities for timetable change (not just the bi-annual production process) and is able to cope with immediate change through the Spot Bid process.

Q3: OUR REVIEW OF NETWORK RAIL'S STAKEHOLDER ENGAGEMENT

Engagement between the various Network Rail regions, on CP7 planning has been varied and mixed but not consistent.

Eastern Region gave quite a detailed day's presentation on various aspects of its portfolio. It sought to go into some finer detail of works planned for CP7 in the various disciplines. North West & Central Region engaged in a slightly more elongated process although not in as much detail. GB Railfreight had not, however, had sight or any view of Southern Region's proposals for CP7.

What is clear, though, is that with the engagement that had taken place with the regions, there was no real feeling or discussion on the type of headline figures of spend or saving now being proposed in the draft determination.

Its publication feels like the first occasion that GBRf, a national UK-wide freight operator, has been able to get an overall picture of how CP7 will look across the country, which is surprising.

GBRf would much prefer a pan-UK view of what features in future Control Periods, with the regional detail behind it for interrogation. The exception to this was the early engagement and discussion for the various elements of the performance regime which has been quite detailed from the start.

Q4: OUR REVIEW OF NETWORK RAIL'S PROPOSED OUTCOMES

Freight Train Performance:
GB Railfreight is concerned that "Freight Cancellations" is the only tracked Tier 1 train performance success measure for freight for CP7. Delays to freight services are every bit as important to FOCs and will be even more so when measures such as speed restrictions to mitigate reduced renewals become more commonplace.

GBRf can see a common scenario where freight trains, delayed by Network Rail imposed speed restrictions, run out-of-course and are then regulated to become even later on their journeys. This is an extremely serious potential issue, which would lead to freight services becoming so unreliable over time that some freight end-customers would likely switch from rail to road.

GBRf, therefore, believes that A2F ought to become a Tier 1 measure as daily performance, and late running, are likely to come under far more scrutiny, not least by FOCs and their customers.

GBRf, therefore, expects there to be detailed forecasts for FCaL and A2F for each region, with each to be publicly reported – it is too important not to do so given the direction that funding for renewals and core renewals are heading.

As ORR has noted, GBRf is also concerned that Network Rail's plans do not provide any evidence about how Freight Cancellations or A2F will be impacted by factors such as expected passenger and freight growth and passenger performance. There needs to be more transparency here.

Coupled to all this, the Network Rail freight benchmark is currently not proposed to be brought in line with the forecast reduction in mileage over CP7. It needs to be, to help ensure the right incentivising behaviours are always at the forefront of everyone's mind.

GB Railfreight is pleased that Freight Growth is shown as a primary Tier 1 measure. Given that the whole industry should be pressing ahead decarbonising the railway, it would also be prudent to show how much new freight growth is electrically-hauled, across all the regions.

Many regions appear to be fighting back against more electric freight, due to a lack of power supply on several main lines (with the current passenger service quantum) so this periodic review is the best time to highlight and measure new electric freight as a sensitivity.

Customer Satisfaction:
GB Railfreight would not want Network Rail to become the only body responsible for surveying its stakeholders. There is an element of "marking your own homework" here and GBRf is firmly of the view that scorecards are a tick-box exercise that really do not achieve much apart from taking up Network Rail's time – time that could probably be better spent dealing with live issues. GB Railfreight made this exact point at the last periodic review. However, it is a little concerning that will be no success or supporting measures for freight going forwards.

System Operation:
As is mentioned elsewhere in this response, the "key initiatives" of ITTS and BTPF are now scrapped so it isn't clear what, if any, System Operator outcomes are leading the direction in CP7. Given the draft determination states that *"the ITTS programme is critical for improvements in timetable production",* some urgent clarity is now needed. Is there, in fact, to be no improvement in timetable production for CP7? If there if, timetable participants need to be involved with any programme which, currently, they are not.

GBRf finds it very concerning that there are no success measures or valid supporting measures for System Operation in CP7.

Given the shocking state of Network Rail's compliance to the current contractual requirement of the Network Code, GB Railfreight wants ORR to aggressively monitor Network Rail for its compliance from this point on, enforce action if necessary and make full use of all its powers to ensure Network Rail is abiding by its current contract. Many TOCs and FOCs are abiding by the Network Code and ORR needs to be far more forceful in ensuring Network Rail does so as well. Individuals will also need to be held to account on this matter as it is so critical to operating companies' contracts, their customers and confidence in the rail freight market.

Freight Growth:
GB Railfreight is clear that decarbonising the economy and railway operations is the right way forward and needs to take place with some urgency. All regions must have credible and developed freight growth plans, with cross-boundary and cross-country flows being at similar levels across those boundaries and the regions must be clear how each will guarantee enough electric power supply for electrically-hauled freight, starting from 1st April 2024.

This is especially the case along the whole length of the East Coast Main Line and West Coast Main Lines. In certain circumstances, it may be the case that some electric passenger services need to be removed from the timetable to accommodate new electric freight, not least as this will help reach the new freight growth target.

In addition, there needs to be a review of how freight services are timetabled, starting with passenger services fitting around freight trains (not the other way round) to aid freight journey time reductions. There are strong economic and environmental reasons for this.

A real reduction in running times often leads to more terminal time to handle the discharging of longer trains, and thus freight growth. In a similar manner to the excellent Scottish HLOS, GB Railfreight would like to see a KPI for an increase in the average speed of freight trains for England & Wales. It helps to drive the right behaviours through the regions which can only be good for rail freight.

With regard to Southern Region's freight growth plans, having a very low 2.9% growth target by the end of CP7 is not acceptable to GBRf, particularly for the reason *"...because of capacity constraints at key junctions".* It is exactly the point that more capacity for freight needs to be provided at these key junctions. There are many parts of the country (particularly on Eastern Region) where there are a number of key constraints close together but that is no valid reason to not have a higher freight growth target.

If necessary, a timetabling solution can be found to accommodate new or longer freight services at the expense of passenger service journey time, or quantum over key junctions, to name but two options. GBRf believes ORR needs to increase the Southern Region's freight growth target, and also its thought process for freight growth, in its final determination.

Network Capability:
This is a subject close to GB Railfreight's heart and business. GBRf welcomes the proposed £72million specifically allocated for safeguarding HAW capability. It is clear that this will facilitate some freight growth but also, importantly, that it is stopping existing commercially viable freight traffic and volumes being lost from rail.

GB Railfreight strongly believes that Network Rail must maintain its baseline capability and that the national baseline capability is defined in a similar manner to the current Scottish CP6 HLOS, with Network Rail to ensure that all routes are capable of accommodating the gauge of all locomotives and rolling stock. This should include rolling stock that has operated in CP4, CP5 and CP6. This would, obviously, need to be brought up to date but only with the formally and correctly established Network Changes that have removed certain gauge clearances.

GBRf welcomes ORR monitoring "capability non-conformance" as there are parts of the network where it is not being taken seriously. GBRf has already supplied ORR with detailed examples of these non-compliances, with many of them still needing to be brought back into compliance. ORR would want freight operating companies (as well as Network Rail) closely involved in designing any CP7 process that monitors network capability non-conformance.

GBRf also welcomes monitoring and reporting of network capability and the Network Change process. It is really disappointing that there are no proposed success or supporting measures being planned for any of these items as there needs to be.

At the very least, perhaps a measure of how many Network Changes are carried out each month or quarter, without proper establishment, before the work commences. This information should be relatively easy to obtain. In addition, a monthly or quarterly figure of network non-compliances needs to be recorded. This information can be provided by Network Rail's own routes and regions, supplemented by information from operators as they occur. Please involve freight operators in this developing work.

Network Availability and Possession Management:
GB Railfreight has recently supplied ORR with detailed evidence regarding the number of late notice possession changes it has received as a UK-wide national open-access operator. The numbers have been extremely high during calendar year 2023 and remain stubbornly high.

For example, from w/c 31st July to 21st August 2023, the number of late notice changes each week were 183, 156, 145 & 181, all of which need to be checked for disruption. This is an unacceptable amount of late change for plans that ought to have been confirmed at the Confirmed Period Possession Plan stage. Obviously, some change is expected but not at this level for such a sustained period. The impression given by these numbers of late changes is that work is not being properly planned in the required timescales. Detailed late change numbers held by GBRf from February to August 2023 can be supplied on request.

GB Railfreight welcomes the enhanced monitoring and public reporting of late notice possession changes and the number of access disputes escalated to the Access Disputes Committee but would be keen to know what action would be taken, if necessary, by ORR, i.e. how will Network Rail be effectively managed with regard to this important aspect of our business?

Q5: OUR ASSESSMENT OF ACCESSIBILITY

No comment to make.

Q6: OUR REVIEW OF NETWORK RAIL'S PROPOSED COSTS AND INCOME

No comment to make.

Q7: OUR REVIEW OF NETWORK RAIL'S PROPOSED COSTS & INCOME

GB Railfreight and its end-customers often have much engagement with the Technical Authority, particularly with regard to the introduction of new rolling stock into the country or the requirement to run existing rolling stock over different or new UK lines.

The provision of timely and accurate information on compatibility assessments, for example, is absolutely key to GB Railfreight's and its customers' businesses. That provision is often already under strain and GBRf does not believe that a cut in spend of 24% over CP7 is the right way forward.

During CP7, there will be even more requirement for widescale introduction of new stock over multiple lines of route. With the compatibility teams spread over the routes and regions (but under Technical Authority), the demand is going to be far greater in some areas then others.

Either the compatibility team needs to become a core central function again, and not assigned to routes/regions, or it will need more people in the team for each route/region to be adequately staffed up. This is such an important part of all TOCs' & FOCs' businesses, right now and going forward, that there cannot be any degradation in its function or information supply.

Q8: OUR ASSESSMENT OF HEALTH AND SAFETY

No comment to make.

Q9: ACCESS CHARGES IN CP7

General Comments:
As an open-access UK-wide freight operator, GB Railfreight strongly believes that, in order to de-carbonise the railway and work to the Government's net-zero legal requirements, the final determination must have a charging regime in place that does not push away any current freight on the railway, encourages new freight onto the railway and gives real stability and confidence for freight markets to grow well beyond the next five years.

The rail freight market is a highly competitive business and is operating on a very uneven playing field compared to road, where road's charges have remained static for many years. Rail has the ability to bring about real modal shift, in a sizeable quantum, and that has been taking place over the last few Control Periods. It needs to continue to do so, as the UK government is serious about its decarbonisation agenda.

GB Railfreight acknowledges that ORR is now proposing a "lesser impact" of VUC rate increases over CP7, with the phased-in approach continuing through to 2029, however GBRf needs to understand how this increase of VUC rates (by 13% or ~18% in real terms over CP7) is in any way consistent with the setting and delivery of the new rail freight growth target and carrying out the legal requirements of Government's net-zero agenda. In our view, it is not.

GB Railfreight has stated in earlier consultations on this topic that these actions are diametrically opposed to each other. The effects of any final determination that has raised freight access charges will not encourage freight onto the railway and will work against a net-zero agenda.

Looking further forward, with the statement that the VUC caps are proposed to be unwound in CP8, this will bring a real lack of confidence for our customers to invest in the rail and rail terminals. That needs bringing to the top of the agenda in 2024 as there must be a long-term view on rail freight charging that pushes the de-carbonisation agenda and modal shift forwards on a sustainable and confident basis.

GBRf had expected to see some real incentives in this draft determination for the use of electric traction, which is the right thing to do, however that is absent.

Specific Charging Comments:
Variable Usage Charges are set, for each Control Period, to recover the short-run marginal costs. GBRf believes this to mean the difference between the freight costs directly incurred, shown for a specified increase in traffic, minus the cost of the Control Period "base plan".

Given that the CP7 base plan is predicted to have service levels of 88% of pre-Covid CP6 levels, GBRf cannot see how such a proposed increase in freight VUCs has come to be and does not believe that the calculations are logical or correct. GBRf needs to be further convinced that the correct methodology is being used here.

GB Railfreight still has some concerns with the proposal for changing the "default period" for altering variable usage charge (VUC) rates. The process of applying for, and agreeing, VUC rates for new types of locomotive and wagons (often carrying different commodities) can sometimes take many months. Currently, this is not an issue as the new agreed rates are applied back to the whole Control Period, ensuring that FOCs are not overcharged in the Control Period.

Were this methodology to change, where the new rates are only applied backwards for one year, then we would want the applicable date to be the date of the first application, not the date of the agreed or published new prices. These two dates can differ by many months and freight operating companies would be financially penalised the longer that Network Rail & ORR take to agree the new rates.

For example, there can be a scenario where Operator A brings a new wagon type onto the network and does not apply for new rates. 18 months later, Operator B starts to use the same "new" wagon and applies for accurate VUC rates with its chosen commodity. This application could take many months to process, and Operator B could end up paying default rates through no fault of its own without the ability to claim the overcharge back. Please consider re-wording your proposal.

Q10: SCHEDULES 4 & 8 INCENTIVES IN CP7

Overall:
GB Railfreight believes the Schedule 8 regime to be an important tool to ensure that both Network Rail and operators take seriously their performance obligations in the track access contract and GBRf has real concerns around removing these incentives for Network Rail.

Currently, with all operators in the regime, Network Rail faces a large financial penalty for poor performance which drives the right behaviours. However, if the majority of operators are no longer to be part of the regime in CP7, this financial penalty to Network Rail will be greatly reduced and, similarly, the incentivising effects.

The removal of any incentivising effects for Network Rail cannot be a good thing and GB Railfreight needs ORR to show it how this behavioural and incentivising effect will be replaced.

Schedule 4 Opting Out:
As GB Railfreight (and other freight operators) do not currently pay an Access Charge Supplement, there would be no incentive for GBRf to opt out of the Schedule 4 regime.

In this schedule, GB Railfreight has real concerns that the dilution of overall Schedule 4 payments would lead to Network Rail, again, not being incentivised to minimise disruption to freight operators and their end-customers. The relatively low levels of compensation for cancellations and variations could result in the needs of the freight customers being largely ignored. This, in turn, will lead to loss of rai freight traffic, not attaining the new freight growth target.

With Schedule 4 compensation being such a small amount of overall project costs (and possibly reducing with future opt-outs), how is ORR going to ensure that FOCs can offer freight end-customers a predictable and reliable service?

As described elsewhere in this response, the recent high numbers of late notice possession changes have also had a significant impact on our ability to deliver reliably (or at all) to our customers. This will also lead to a situation where current customers move away from freight on rail and it being extremely difficult to achieve the predicted growth targets for freight over the Control Period.

Mid Control period recalibration:
GB Railfreight does not agree with the proposal for mid-Control Period recalibration of Schedule 8. The Schedule 8 regime encourages good practice from operators and infrastructure suppliers and the importance of these should not be underestimated or diluted by constant recalibration.

The current methodologies (and levels of compensation) are fully integrated into contracts that GBRf holds with many of its customers and suppliers throughout this and the next Control Period.

Consistent, stable and predictable access to the network (Including the cost of that access) is key to freight operators being able to grow new markets in rail freight market, allowing Government to meet its green agenda targets.

There might be an argument for ORR's proposal around "catastrophic" events (such as COVID19) but there would need to be clear targets that would trigger such a discussion on mid-period recalibration taking place.

CP7 Recalibration Process:

This CP7 recalibration process seems to have been prolonged and drawn out, with data and information being difficult to obtain in a timely manner. It is becoming very apparent that the FOC benchmark that has been calculated used some very old data, due to the Covid periods not being representative data. The benchmark will not be achievable as we move into CP7.

In the recent working group discussions, a number of adjustments were proposed by the FOCs to try to address some of the highlighted data discrepancies that underpin the whole Schedule 8 benchmarking exercise. These suggested adjustments have all been rejected by ORR on the basis that there was not enough persuasive evidence to take then forward.

Taking into account that the FOCs were not allowed any of the proposed adjustments to be incorporated into the CP7 benchmarking, GB Railfreight is extremely concerned and strongly objects to ORR permitting the significant adjustment allowed to the passenger TOC payment rates, but with no persuasive evidence to support that adjustment. ORR appears to have a serious case to answer here and GBRf has no confidence that ORR is currently dealing with this particular aspect in a proper and impartial manner.

GB Railfreight, again, formally asks that FOCs are held harmless to the effects of this CP7 recalibration process. Three options have been proposed to ORR that would allow for this.

Failure to hold FOCs harmless is clearly seen by GBRf as favouring Network Rail and TOCs over FOCs. This has strong echoes of the last contentious point in the Control Period 6 recalibration (over capped minutes) where it was obvious that the FOC benchmark had been kept artificially low due to a Network Rail calculation error.

On that occasion, the ORR admitted that a basic mathematical mistake had been made, correcting things going forward, but would not allow for this to be retrospectively corrected, again favouring Network Rail and TOCs over FOCs.

This need urgent attention and continued discussion to ensure there is no discrimination at play in the calculations and effects of this vitally important work.

Q11: FINANCIAL FRAMEWORK FOR CP7

No comment to make.

Q12: MANAGING CHANGE IN CP7

Under section 3.4 of the managing change consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.
No comment to make.
Q13: ARE THERE ANY OTHER COMMENTS YOU WOULD LIKE TO MAKE?
No further comments.

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Govia Thameslink Railway

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

3. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

No Comment

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

No Comment

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

No Comment

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

No Comment

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

GTR agrees that accessibility is a priority in the railway industry and improvements can continue to be made with Network Rail working in conjunction with TOCs and disabled groups and organisations. We would like to see greater scrutiny by the ORR of the derogation process that NR can and often does use to bypass requirements set out in the Code of Practice. The draft determination makes no reference to this. Further to the items ORR has outlined in its draft determination, we would greater emphasis on asset data as it pertains to accessibility i.e. where lifts and/or escalators are out of action, and the effect this has on accessibility for all. Network rail has a key leadership role at all managed stations in proactively working with all TOCs at a local level to ensure all processes are joined across all operators, and we note ORR acknowledgement of this. We believe this can be aided by it being a key step of Network Rail projects for their project teams to attend the relevant TOCs accessibility panel to consult about projects at an early stage.

Click or tap here to enter text.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

No Comment

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

No Comment

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

No Comment

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

GTR has received the draft Access Charges and acknowledges there is a circa 7% increase in VUC charge overall. This level of increase is unexpected however we note that the ORR has stated these figures are subject to change following the draft determination as Network Rail refines and updates the recalibration exercise and that all these figures are based on assumptions, particularly in respect of forecast maintenance and renewals expenditure for its track, civils and signalling assets.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

GTR understands the intention behind offering an opt-out mechanism for Schedule 4 for CP7, especially with the current uncertainties surrounding GBR, however we have a number of concerns. Firstly, if the option to opt out of Schedule 4 is taken up by a number of operators, this will have the effect of reducing the incentive on Network Rail to plan and undertake possessions as efficiently as possible. We believe it is important for there to still be some form of incentive regime for NR should significant numbers of TOC's opt out of Schedule 4. How has ORR evaluated the risk of removing Schedule 4 and the impact of behaviours as a result?

At the time of providing this response, GTR has not had sight of any indicative Access Charge Supplemental for CP7, so we are not yet able to make any decision on Opting in or out of Schedule 4. However, on the larger issue of opting out of Schedule 4, we do have serious concerns about being in the position of receiving no compensation in the case of possessions.

GTR has been involved throughout the Schedule 8 recalibration process and has voiced its concerns, on the period used for recalibration (on the grounds that this period captured to many factors such as the tail end of the covid epidemic and significant industrial action, all factors which are not expected to be replicated in CP7) and the new methodology used to calculate the draft Network Rail payment rates.

The outcome of this exercise shows circa 75% reduction in Network Rail Schedule 8 payment rates. We believe this very large reduction in the payment rates could have the effect of reducing the incentives on Network Rail to limit the level of disruption it causes. In addition, this significant reduction in proposed payment rates does not appear to be in line with the ORR's policy of only making limited, proportional changes for CP7. We understand that the ORR has chosen to move forward with implementation "Option 3", that being to implement 50% of the proposed change for CP7. In addition, we understand that there is further ongoing work regarding these rates, so we are keen to see the results.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

GTR has its concerns about how the ORR will hold Network Rail accountable for overspending too early in the next Control Period. Our experience has been of receiving multiple cancellations of planned engineering access at the back end of this year due to overspend and lack of funds at the end of CP6 to the work that was planned. The following are examples of cancelled planned possession for works delivery: Chichester to Havant blockade, Barnham to Bognor blockade and Arundel Junction to Tunbridge Wells blockade. How will ORR monitor expenditure during the control period so that passengers receive the benefits of performance resilience through maintenance and renewals work?

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

Any other comments on managing change.

No comment

13. Are there any other comments you would like to make?

No further comments

Thank you for taking the time to respond.

Annex A: Publishing your response

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Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Greater Anglia

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

Whilst we are supportive in general of the draft determination there seems to be a contradictory theme between stated aims of better performance and fewer asset renewals and core renewals due to funding constraints. Cited examples of managing lower levels of renewals spend with restructuring of maintenance and increase in maintenance levels and using tools to manage this such as increasing use of speed restrictions (i.e. TSRs) are in direct opposition to improving performance. There seems to be a lot of risks identified in Network Rail's Eastern Region plans for CP7, chiefly the national policy of decrease in renewals meaning an increase in maintenance and restructuring of maintenance function in CP7 neither of which Greater Anglia believes sit harmoniously with improved performance or increase in traffic growth. This coupled with potential dilution of historical performance incentives has potential to create conditions for perfect storm of disbenefit to performance throughout the control period and similarly does not appear to align with "Putting Passengers First", a key Network Rail programme.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

Click or tap here to enter text.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

Click or tap here to enter text.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

Click or tap here to enter text.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

Accessibility is a priority for Greater Anglia. We support all cross industry projects to ensure that the railway is as accessible to all as it can be and we continue to work to achieve this. ORR's 2023 annual rail consumer report highlights that demand for passenger assistance is increasing and that passengers are generally satisfied with the service they receive whilst operators must continue to improve the accessibility they provide. Network Rail's participation in these schemes is key to improving accessibility at stations and we would encourage ORR to continue to monitor Network Rail's compliance with its legal obligations in respect of accessibility.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

Given the proposals for levels of funding available in respect of renewals and maintenance, we note ORR's view that Network Rail might have to make use of operational measures such as speed restrictions and temporary speed restrictions to mitigate the effect of lower levels of renewals expenditure on safety. This is neither in the interests of passengers nor operators and will affect the ability of Greater Anglia to offer improved journey opportunities for passengers during CP7 and potentially beyond. ORR must ensure that use of speed restrictions, which already blight our performance today, is monitored e.g. via asset sustainability. We note that Network Rail does not anticipate recovering asset condition and performance to CP6 levels until CP11 in England which is already a huge risk to performance levels in CP7, before taking into account the above.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

Click or tap here to enter text.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

Click or tap here to enter text.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

Greater Anglia is generally supportive of the overall approach to the PR23 charges review and that given the changes currently proposed to industry structure in CP7 now is not the optimum time to implement material changes or increasing the complexity of the access charges. We are supportive of the removal of the wash-up mechanism from FTAC and the proposed new simplified cost allocation methodology as previously stated.

Greater Anglia is also supportive of the approach taken in the draft determination in respect of Variable Usage Charges but we remain sceptical that shouldering an increase in VUC due to higher levels of maintenance activities during the control period will facilitate network performance improvements. We note Greater Anglia raised in its response to ORR's Review of Network Rail's Access Charges consultation a raft of comments regarding the VUC calculator, particularly in respect of bi-mode units. We are not aware that these comments have been taken into account at this stage however we are working with Network Rail to update VUC charges in respect of our bi-mode fleet for CP7.

We also support the removal of the option to use a partial fleet metering option however Greater Anglia does not support the removal of the facility to obtain bespoke EC4T modelled rates for new trains. Greater Anglia benefitted from being able to introduce our new fleets on bespoke modelled rates over a period of approximately 2 years, whilst ironing out myriad issues with the meters, their software and data collection systems issues as well as TABS interface issues because it is not possible to fully understand functionality of on train meters and their interface with TABS prior to delivery of units. Without the facility to create modelled rates for the new vehicles we would have been subject to material financial risk. We would be happy to discuss in further detail the specifics of this issue with ORR.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

In respect of Schedule 4, Greater Anglia supports the inclusion of an opt out mechanism in principle, providing train operators an element of flexibility to adapt to future industry changes. However we remain concerned that this will eradicate any incentive effects the regime has to ensure Network Rail plans possessions efficiently and gives industry sufficient notice of closures, if and when operators begin to opt out, leaving very little incentive for

Network Rail to improve its recent behaviours in respect of this activity. Currently Network Rail is not compliant with Informed Traveller since Covid, there is no industry agreed recovery plan in respect of this and without Schedule 4's compelling financial signals driven by notification factors we are at a loss to understand how Network Rail's possession planning can be improved in future. We are supportive of ORR's proposals to increase monitoring of Network Rail's possessions management to maintain incentives for minimising late notice possession changes however given the monitoring falls short of setting targets or standards in this area we see this as a fairly weak tool for incentivising behaviours and activities around possession planning and management, particularly coupled with a potential loss of Schedule 4 incentives.

We are also disappointed that, despite all the evidence supplied by industry surrounding Type 2 and Type 3 claims, ORR has decided not to develop a method for settling claims in relation to these types of Restrictions of Use. Operators will continue to wait years for reimbursement of compensation due whilst contractually compliant claims are stuck in Network Rail's opaque claims panel process in open ended discussions, while Network Rail hides behind its internal claims protocol with no contractual obligations on either party to respond or prioritise in a timely manner.

With regard to Schedule 8, Greater Anglia is generally in agreement with ORR's draft determination decisions. However since the publication of ORR's policy conclusions document the recalibration of Schedule 8 has concluded and yielded questionable results based upon an updated methodology. Had we had greater clarity at the time when responding to ORR's Schedule 8 technical consultation on the outcome and robustness of studies in relation to semi-elasticities and the direction of travel in respect of CP7 payment rates, Greater Anglia would have been supportive of changes to compensation which more fully included all financial impacts of delay, such as "Delay Repay" payments. So we welcome ORR's approach which goes some way to mitigating the effects of implementing the semi elasticity methodology during CP7 whilst industry continues to review the robustness of this new evidence. We also advocated for ORR's proposal to update benchmarks annually, so therefore we fully support ORR's proposal to create new provisions to allow for mid control period updates to Schedule 8 to accommodate a wider set of circumstances, including its commitment via the Industry Working Group to revisit the industry's evidence base ahead of any mid control period recalibration in CP7 and in any case ahead of the PR28 recalibration work.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

Greater Anglia is content with ORRs draft determination and we agree that the CP6 financial framework remains broadly fit for purpose requiring only limited changes for CP7.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

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Click or tap here to enter text.

Any other comments on managing change.

Click or tap here to enter text.

13. Are there any other comments you would like to make?

We have no further comments.

Thank you for taking the time to respond.

Annex A: Publishing your response

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Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Heathrow Airport Limited for Heathrow Rail

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

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3. Our review of Network Rail's stakeholder engagement

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Nil comments.

4. Our review of Network Rail's proposed outcomes

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Nil comments.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

Nil comments.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

Nil comments.

7. Our review of Network Rail's National Functions

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Nil comments.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

Nil comments.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

Nil comments.

10. Schedules 4 & 8 Incentives in CP7

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Nil comments.

11. Financial framework for CP7

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Nil comments.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

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Nil comments.

Any other comments on managing change.

Nil comments.

13. Are there any other comments you would like to make?

Heathrow Airport Limited (HAL) notes there is certainly some motivation for the option to switch off Schedule 8, there would need to be sufficient legislative change before this can be implemented. HAL needs to understand if this is progressed, e.g. if an operator on the Great Western Mainline like GWR were to opt out of Schedule 8 to \ from NR (or GBR in future) what impact could there be on behaviours? Could this impact performance on the Heathrow spur? We would also like to understand the impact on operators that do not opt out of Schedule 8.

Thank you for taking the time to respond.

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- ensure that the PDF's security method is set to no security in the document properties.

PR23 Charges Review – Further consultation on open access airport services

Heathrow Southern Railway Ltd response.

Heathrow Southern Railway Ltd (HSRL) is a private sector company promoting construction of a rail link from Heathrow to join the existing Network Rail infrastructure north of Staines on the Windsor – Staines branch and between Egham and Virginia Water. AECOM is an investor partner in HSRL.

The project involves construction of 8 miles of new railway, mostly in tunnel, and will enable through operation of trains from Paddington via Heathrow to Guildford, Basingstoke and Reading via Bracknell, together with services from Heathrow to Waterloo via Richmond and Hounslow. The Guildford/Basingstoke/Reading trains would be operated as extensions to existing Heathrow Express services, both maintaining the financial viability of this important fast link to the airport after abstraction following the opening of the Elizabeth Line, and providing an alternative route to London, together with access to Old Oak Common for interchange with HS2. Whilst the HSRL route would be slower than, for example, Guildford – Waterloo, journey times from Bracknell and Wokingham to London would be significantly faster than the existing Waterloo route.

HSRL has developed this project over a number of years, and has had extensive discussions with Heathrow Airport Ltd, the Department for Transport, Network Rail and key stakeholders. We have also met ORR on a number of occasions. The project has widespread stakeholder support and is the "candidate scheme" in a consultancy study currently being carried out by Arup for the Heathrow Area Transport Forum (HATF); we are confident that HATF will conclude that HSRL is the favoured scheme for southern access to Heathrow, and we expect that HAL will then publicly support the scheme also.

HSRL is currently pursuing two approaches to the project:

1. We have signed a Collaboration Letter with MTR UK who are evaluating financing the new link on the basis of open access operation of the services involved, with the surplus of farebox revenues above operating costs used to service capital investment in the new rail infrastructure.

2. We are also evaluating a model under which the train services are operated as part of standard rail concessions, with capital costs serviced through an Investment Recovery Charge, the level of which would be subject to ORR approval.

It is also possible that a hybrid approach could be adopted, with Paddington – Heathrow – Guildford/Basingstoke/Reading services operated on an open access basis, and Heathrow – Waterloo services incorporated in a future South Western concession.

We object to ORR's proposal to allow Network Rail to levy an Infrastructure Cost Charge (ICC) on open access operators serving Heathrow Airport, as it is clear that this will significantly reduce the prospects of investment. The proposed ICC charge of £5 per train mile will raise the operating cost of the service and reduce the amount of money which can service a capital investment. It will therefore

OFFICE OF RAIL AND ROAD

PR23 draft determination consultation: pro forma

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Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: Click or tap here to enter text.

Job title: Click or tap here to enter text.

Organisation: Click or tap here to enter text.

Email*: Click or tap here to enter text.

Telephone number*: Click or tap here to enter text.

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

The Heritage Railway Association feels that the draft determination and its basic influences are too narrowly focussed. We feel that the process is dominated by outputs rather than outcomes. Rail transport is an enabler and a driver of economic prosperity, however the determination fails to adequately address this. The context provided by the determination focuses on challenges within the rail industry, rather than the outcomes that the rail industry delivers already, or how it can maximise future outcomes for the benefit of taxpayers and all parts of the UK economy and society. It talks of reducing financial burden, not of maximising benefits. We know that the best transport networks in the world make these links much more explicitly than in the UK currently. We see nations like Switzerland designing their transport networks around economic and societal outcomes. The Swiss also understand that leisure travel by rail delivers huge economic benefits and drives their visitor offer, rather than focussing entirely on commuting. The Heritage Railway Association believes strongly that the best future for rail in the UK lies in such an outlook. As a part of the wider rail sector, heritage rail knows that it makes a £600m impact on the economy each year, but that our wider cultural and societal benefits are also extensive. From training young people to become future engineers, to driving the visitor economy in many places across the UK – heritage rail delivers much wider benefits than simply running trains. We believe that the same is true of the rail industry as a whole, but of course on a much wider scale.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

The draft settlements contain a number of disappointing features. Firstly, given the undoubted and continued rise of the importance of leisure travel for rail since the Covid-19 pandemic, only one of the settlements makes reference to tourism. We found it particularly surprising that the Scottish settlement makes no reference to tourism or leisure travel, but we believe that this is equally unfortunate across the other settlements where tourism does not appear. We believe that an equivalent to the Wales and West settlement content on tourism is the bare minimum that should be expected across all regions. Our chief concerns however are based around the cost-cutting agenda prominent across all of these settlements. We feel that there is strong potential for cost-cutting decisions to be made on a volumes basis rather than a values one. This is particularly acute where the interface between heritage rail and national network occurs. These interfaces are by their very nature normally not high-volume, however their value can be enormous. As an example the semi-regular interchange of rolling stock between heritage rail and national network makes such things as the railtour and visit programme by the steam locomotive Flying Scotsman possible. The economic impact of such visits to railways as the Bluebell Railway or North Yorkshire Moors Railway will be equal to many months of ‘normal’ traffic – even though only one return movement over the interface between the national network and heritage rail has taken place. With the celebrations of the 200th anniversary of the Stockton and Darlington Railway due to fall early in the latest control period, the importance of these interfaces is more relevant now than ever. The whole rail industry is working on plans to celebrate this key milestone and utilise it for the benefit of the modern rail network as well as railway heritage. The interfaces between heritage rail and national network must at the very least be protected, and ideally developed further whenever opportunities present themselves. Also within the cost-cutting remit comes the changes to digital signalling implementation. Again, we feel the need to make it clear that there must be recognition of the high cultural and economic value of heritage operations on the national network. Any changes to the implementation of digital signalling must protect the access of railtour operators to the national network and the fleet fitment agenda (and any alterations to it) must not either make it technically or financially impossible to maintain current levels of access by historic steam, diesel and electric locomotives and rolling stock to the national network. Again we feel it is essential that volume is not the only measurement taken when making decisions about any cost reductions or modifications to implementation plans. Finally, we note reference to reducing emissions. We thought it would be enlightening to share some comments recently made to the Scottish Government in relation to decarbonisation of public transport, which we also believe are pertinent here: “The Heritage Railway Association believes that decarbonising public transport is likely to require a complicated and multi-faceted approach. We would urge against any form of broad-brush approach that could lead to potential unintended consequences. It must be borne in mind at all times that public transport as a whole is a more environmentally sustainable option than the private motor vehicle. Any policy which, unintentionally or otherwise, moves journeys towards the private motor vehicle must be avoided. We also believe that the greatest benefits for Scotland would come from avoiding short-term solutions and focusing instead on the longer-term. Heritage rail, and rail transport in general, can be a key part of reducing overall transport emissions but are by their very nature long-term projects and investments.”

3. Our review of Network Rail’s stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

The Heritage Railway Association has had no direct involvement in the stakeholder engagement, therefore we have no specific views on its success. In general however, we believe that the national network could do more to engage with the heritage sector in a way that would be mutually beneficial.

4. Our review of Network Rail’s proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

As indicated above, we believe that the outcomes provided in the supplementary document are actually outputs and are focused within the rail industry rather than on its wider benefits. We believe it would be far more beneficial if the process was focused upon true outcomes such as economic benefit or overall reduction in emissions as a result of modal shift. On a smaller scale, it would be beneficial to understand the economic impact of measures such as, for example, reducing the number of cancelled trains rather than focusing entirely on the statistics. We think there are hints that such a broader approach may be starting to creep into thinking, such as '9.15 Reduced passenger demand because of the pandemic, changed commuting habits, as well as growth in the rail freight market, may provide an opportunity for Network Rail to reconsider timetables and allow for more freight capacity. There is both an economic and environmental rationale for this. Overall, Network Rail's SBP aligns well with this opportunity and the requirements in the HLOSs to grow rail freight in CP7.' However, we believe that there is considerable scope to identify those economic and environmental rationales and use them more effectively.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

The Heritage Railway Association does not have any specific comments to make in relation to this section.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

As Open Access income is not dealt with in any detail as part of this process, the Heritage Railway Association has very limited views on this section. We do believe that there are significant untapped opportunities for heritage related operations (almost certainly under Open Access arrangements) that could drive substantial economic and cultural heritage benefits. We would welcome the opportunity for dialogue on this matter.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

The Heritage Railway Association has no specific comments to make on this section.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

The Heritage Railway Association has no specific comments to make on this section.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

In studying the access charges supplementary document, we were drawn to two statements made. The first is that Open Access operators targeting leisure travellers are seeing a stronger return to pre-pandemic levels. The second is that variable charges for charter operators are likely to be subject to increases. We find it concerning that the opportunity for charter operators to take advantage of that stronger interest in leisure travel, while at the same time encouraging traffic onto the railways that might not otherwise choose rail, may be reduced by higher costs. We feel that instead a policy of encouraging operations that can capitalise on the growth of leisure travel would be hugely beneficial for the rail sector as a whole. Operation of heritage locomotives like Flying Scotsman provide a flag bearer for UK rail as a whole – it is as recognisable internationally as Big Ben. The forthcoming 200th anniversary of the Stockton and Darlington Railway will also fall in this period and we feel that anything that makes celebrating this milestone more costly or more challenging must be avoided.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

The Heritage Railway Association has no specific comments to make in relation to this section.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

Click or tap here to enter text.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

Under ***section 3.4*** *of the* ***managing change*** *consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

The Heritage Railway Association has no specific comments to make on this section.

Any other comments on managing change.

The Heritage Railway Association has no specific comments to make on this section.

13. Are there any other comments you would like to make?

Click or tap here to enter text.

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

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If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Consent

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

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Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: LNER

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

LNER notes that in the Exec Summary (section 1.6) there is a requirement for Network Rail to deliver Freight Growth but no equivalent measure to support passenger growth. In terms of section 1.32, we also remain unconvinced that the lowering of Sch 8 and Sch 4 payment rates align to the overall aim of incentivising improved performance and improving the efficiency of engineering access. We welcome the introduction of the Performance Improvement and Innovation Fund. We have concerns on the impact of reduced spending on renewals and the proposals for asset life extension will compromise safety and performance.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

LNER welcomes the assumption that the ESG timetable will be implemented on the Eastern Region. Our comments on the draft settlements for both Scotland and the Eastern Region are similar. LNER remains concern that the performance targets for both Scotland and Eastern Region are not suitably challenging. As an operator of relatively few trains on the network, we are unable to comment fully on the performance targets for the route as we have not yet received the individual TOC targets. We also remained concerned about the reduction in spend on renewals with activity focusing on asset life extension and refurbishment. We are also concerned that this approach may compromise the safety targets for the route. We have some concerns about resource levels in System operator in view of the high level of timetable work in the pipeline for CP7 and the levels of engineering access that may be required to support on going maintenance work. With the delay to PfC120, we are not in a position to understand the ongoing impact of the ITTS workstream.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

As has been noted in the settlement document, engagement with LNER in Scotland could be improved. As a key provider of cross-border services, LNER makes a significant contribution to the Scottish economy. The ESG timetable will also see further enhancements to those services. We look to engage further in CP7 to support enhancements to the network. Engagement with the Eastern Region remains strong at a senior level however we believe opportunities exist for more engagement at practitioner level to support the development of the route.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

We have commented on performance in previous sections of this document. We note that while there is a target for Freight Growth, there is no equivalent target for passenger growth.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

LNER supports improving the accessibility of the railway and is committed to doing so. While noting the improvement in accessibility on the network, we would support a challenging target to increase accessibility of the network.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

LNER has no significant comment to make but refers to the earlier comments concerning the reduction in spend on asset renewals.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

LNER has no comment on this section.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

LNER has some concerns over the lower level of renewals planned for CP7 and the life extension of existing assets. LNER would support increased renewals and the installation of more modern infrastructure which would bring the benefit of improved technology and standards, supporting improved safety for all rail workers. We remain concern about the impact of Climate Change and whether this has been fully factored into business planning.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

LNER would question the increase in VUC rates given the overall reduction in spend on renewals on the network. This seems counter-intuitive given the lower improvement in network capability. We have concerns over the methodology used to determine the EAUC as in effect this seems to imply that a reduction in one operator's services could lead to an increase in other operator's changes.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

LNER has reviewed the information supplied so far in the consultation of the proposals for Sch 4 and Sch 8 payment regimes. We note that payment rates have significantly reduced and remain unconvinced that this represents the true impact of poor performance. We have concerns that the final payment rates were determined late in the process and options to review previous decisions were limited. We have already supplied evidence to the ORR where we demonstrate that the revised payment rates would under-compensate for planned engineering work. We have yet to see the individual TOC performance benchmarks and are unable to comment further but our concern about being an operator of relatively few trains (though of high value) on the network remain. We also have concerns that the reduction in payment rates will not incentivise improved performance nor will it support efficiency in engineering access. We have also made comment in previous responses where the cost of rail replacement is index linked to inflation, but fuel prices have increased by greater than inflation. This is seen in the cost of rail replacement to LNER but not in the compensation we receive.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

LNER has no comment on this section.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

LNER has no comment on this section.

Any other comments on managing change.

Click or tap here to enter text.

13. Are there any other comments you would like to make?

LNER has no further comments.

Thank you for taking the time to respond.

Annex A: Publishing your response

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If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

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Consent

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If you send us a PDF document, please:

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- ensure that the PDF's security method is set to no security in the document properties.

From: [REDACTED]
To: PR23 Programme
Subject: [EXTERNAL] ORR consultation the PR23 Draft Determination

Date: 29 August 2023 16:24:23

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi there

Please accept this email as the London TravelWatch comments to the above. We are only commenting on section 4 & 5 as these will potentially affect passengers and their experience of using or trying to use the railway.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

It is disappointing that there is no target to achieve growth similar to that of the rail freight market. London TravelWatch has seen numerous consultations regarding freight growth but passenger services appear to be continually reducing which is not inline with Governments Carbon Reduction Policy.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

While London TravelWatch supports this approach is does appear to be in line with other potential changes such as ticket office closures and we would like to see an approach that encompasses all changes.

Many thanks

[Redacted]

Transport Focus and London Travelwatch work in partnership to support passengers with complaints and as a result both organisations have a responsibility for the information you share with us, and access to it for the purpose of pursuing your complaint. If you have any questions about this arrangement, please don't hesitate to ask.

www.londontravelwatch.org.uk

Follow us on Twitter, YouTube and LinkedIn.

www.transportfocus.org

Follow us on Twitter. Our chief executive tweets [redacted]

Sign up to our email list to keep up to date with London TravelWatch work.

London TravelWatch is the operating name for the London Transport Users Committee

Transport for London
London Underground Limited

Ext/Direct:
Our Ref:
Your Ref:

London Underground Limited
National Rail Agreements
Procurement & Commercial
Transport for London
5 Endeavour Square
London
E20 1JN

Regulatory Policy Team
Office of rail and road
25 Cabot Square
London
E14 4QZ

Sent by email

Date 25 August 2023

Dear Sir/Madam,

Response to Implementing PR23: consulting on drafting changes to access contracts

Section 6 – Changes to station access contracts

Relating to station long term charge recalibration, LUL is concerned with the degree of change within the draft price list & model used relating to its station portfolio.

Table 1 shows that LUL LTC costs increase by £1,990,201.89 (a 74% increase from CP6 2023-2024) due to the recalibration model used.

When assessing the overall cost variances across the UK, LUL has experienced a high increase to a number of stations, with particular concern to Highbury & Islington Station (high level). LUL is also within the top 2 within the UK relating to increased cost per station - £ 140,610.05. See Appendix A.

Highbury & Islington (High Level)

Highbury & Islington (High Level) has moved to Category A from B and has a cost increase from £91,357.23 to £435,783.35. This is a 377% increase in cost from one control period to another. The move to category A suggests that Highbury & Islington (High Level) is in the same category as York and Newcastle. London Underground will always have high footfall stations, being situated in the capital of the UK and being the method chosen by many to travel throughout London, interfacing with a number of other TfL Concession operators and Network Rail Managed stations.

However, Highbury & Islington (High Level) station is not a station where there is a large area of infrastructure that requires maintenance and/or investment within the leased area. It should not be compared to such stations as Newcastle or York. The Eastern Strategic Business plan for CP7 shows very little investment for stations. LUL is concerned that many of the leased stations have suffered from lack of investment in CP6, resulting in many stations, between Queens Park (London) and Harrow & Wealdstone (excluding Willesden Junction), to have life expired assets with high health & safety risks, for example, canopies. It is felt that London Underground will now suffer the same in CP7 despite a £7.3million investment over the course of the control period. It is noted that the level of footfall has changed within the station categories causing a levelling up of stations to maintain standardisation of each category. Can the ORR please define how this was assessed in terms of overall cost impact to TOC's and its overall philosophy to introduce small gradual changes across CP7.

Overall variance across the LUL station portfolio

LUL has 14 stations, 13 have not moved in station category, yet costs have increased by a weighted average of 106%. How has Network Rail been regulated to ensure cost efficiencies are made, as a 106% increase overall in stations that are deemed the same as CP6 is unreasonable?

Table 1: Variances across 14 LUL Stations

Station Name	Region	CP7 Station Category	23-24 CP6	CP7 Year 1	CP6 Vs CP7 Difference	% Change
Blackhorse Road	Eastern	C	£68,003.19	220,106.38	£152,103.19	224%
Gunnersbury	Eastern	C	£101,797.67	220,106.38	£118,308.71	116%
Harlesden	North West & Central	C	£137,711.09	371,603.85	£233,892.76	170%
Harrow & Wealdstone	North West & Central	B	£653,690.43	738,407.08	£84,716.65	13%
Highbury & Islington (North London Line)(High Level)	Eastern	A	£91,357.23	435,783.35	£344,426.12	377%
Kensal Green	North West & Central	D	£66,905.14	156,439.80	£89,534.66	134%
Kenton	North West & Central	D	£137,711.09	156,439.80	£18,728.71	14%
Kew Gardens	Eastern	D	£187,433.25	131,092.27	-£56,340.98	-30%
North Wembley	North West & Central	D	£137,711.09	156,439.80	£18,728.71	14%
Queens Park (London)	North West & Central	B	£398,464.65	738,407.08	£339,942.43	85%
South Kenton	North West & Central	E	£66,905.14	77,978.55	£11,073.41	17%
Stonebridge Park	North West & Central	D	£66,905.14	156,439.80	£89,534.66	134%
Wembley Central	North West & Central	B	£398,464.65	738,407.08	£339,942.43	85%
West Brompton	Southern	B	£163,178.87	368,789.28	£205,610.41	126%
		Total	£2,676,238.63	4,666,440.52	£1,990,201.89	74%

In addition, a lack of investment seen within the strategic business plans for CP7 and a lack of investment seen in CP6 within the London Underground portfolio drives the question why it is paying significantly more than other operators across the UK?

Table 2, below, details some of the longstanding issues / life expired assets that are at increased safety risk from structural failures. Will these be prioritised going into CP7?

Having reviewed a draft copy of the proposed CP7 works, it is disappointing to note that there is very limited works that will address the issues detailed below. There appears to be no plans for South Kenton, North Wembley and Stonebridge Park. Noting the vast increase in charges for Highbury & Islington and West Brompton there are no obvious plans for any expenditure at these two stations in CP7.

Table 2: Longstanding issues at LUL Stations

REF.	STATION NAME	LONGSTANDING ISSUE/S
1	North Wembley	Hole in CER room caused by fallen tree - water ingress issue
2	Wembley Central	Water ingress - falling debris
3	South Kenton	Water ingress Platform tiling Canopy work Pigeon proofing
4	Kenton	Ceiling leak Tactiles
5	Queens Park	Canopy works Pigeon netting under the raft New gutters Unistrut works Structural/Wall cracks
6	Stonebridge Park	Water leak from the embankment
7	Kensal Green	Structural issues Roof repair
8	Harrow & Wealdstone	Toilets out of order

Therefore, LUL asks for further explanation / justification with regards to the reasoning for the large increases highlighted above.

Yours faithfully

[Redacted]

Appendix A - Overall cost variances across the UK

TRAIN OPERATING COMPANY	STATIONS	SUM OF VARIANCE	AVERAGE VARIANCE	MAX VARIANCE
Abellio East Midlands Limited	102	£1,041,901.64	£10,214.72	£39,162.81
Arriva Rail London Limited	49	£ 6,377,062.19	£130,144.13	£1,372,833.16
First Greater Western Limited	196	£12,765,154.09	£65,128.34	£721,657.68
First MTR South Western Trains	179	£10,348,122.71	£57,810.74	£372,738.20
First Transpennine Express Limited	19	-£394,067.95	-£20,740.42	£82,141.06
First Trenitalia West Coast Rail Limited	16	£841,258.09	£52,578.63	£318,470.40
Govia Thameslink Railway Limited	240	£6,098,310.03	£25,409.63	£1,215,791.84
London North Eastern Railway Limited	2	£1,230,319.20	£615,159.60	£619,341.95
London Underground Limited	14	£1,968,540.76	£140,610.05	£365,833.27
Merseyrail Electrics 2002 Limited	66	£1,468,552.10	£22,250.79	£247,433.28
MTR Corporation (Crossrail) Limited	12	1,353,535.59	£112,794.63	£603,695.74
Network Rail	19	-£1,547,156.27	-£81,429.28	-£1,256,340.95
Northern Trains Limited	467	£3,169,156.00	£6,786.20	£326,415.06
ScotRail Trains Limited	360	£76,326.69	£212.02	£352,446.22
SE Trains Limited	164	£9,331,354.52	£56,898.50	£232,381.63
The Chiltern Railway Company Limited	35	£685,908.43	£ 19,597.38	£735,005.66
Transport for Wales Rail Limited	193	£2,656,778.44	£13,765.69	£315,820.16
West Midlands Trains Limited	147	£51,291.74	£348.92	£231,824.28

Appendix B – Station Categories

PR18 / CP6

Station Category	Daily entries range at station
A	13000 +
B	5000 - 12999
C	2500 - 4999
D	1200 - 2499
E	300 - 1199
F	0 - 299

PR23 / CP7

Station Category	Daily entries range at station
A	6302 +
B	3058 - 6301
C	1528 - 3057
D	765 - 1527
E	189 - 764
F	0 - 188

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: MTR Elizabeth line

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

No comments

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

It will be important to ensure that Anglia and Western Routes engage with MTR Elizabeth line to produce train performance targets that deliver Crossrail's Sponsors' requirements and reflect the requirements of our Concession Agreement with Rail for London.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

There was good route level engagement from Western Route, but a lack of proactive engagement from Anglia Route, which we had to chase.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

The specification of train performance targets at the Regional level is too aggregate to be that useful other than as a general indicator of expectations, particularly where train operators cross Regional boundaries including MTR Elizabeth line. Binding targets should be set at Operator level to supplement these and make it clear what Network Rail is expected to achieve for individual operators, especially given the significant investment in Crossrail. Targets should be designed to reflect passenger use (i.e. annual passenger journeys) to ensure appropriate focus is applied where it will generate the most value.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

We support the ORR's proposed approach, which focuses on the following areas: ensuring compliance with design and assessment requirements for accessibility, additional training for "turn up and go" assistance, fitment of tactile paving on platforms, improving data quality and availability in relation to accessibility and improving response times to escalator and lift faults.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

We note the need to prioritise renewal expenditure and agree that this should be focussed on routes that contribute the greatest value to the overall network, including MTR Elizabeth line. The consideration of value should include the passenger volumes conveyed, the benefits to the wider economy, as well as the revenue generated to ensure that the full economic value of the Elizabeth line (including the Return on Investment in the Crossrail Project) is understood as part of any decision making process.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

No comments.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

We note the issues inherent in reprioritising renewals expenditure. It is critically important that the impact on risk profiles by asset type is understood and mitigated to ensure that risks remain as low as reasonably practicable. It is also important to note the secondary impact on health and safety if Network Rail infrastructure fails, for example passengers trapped on trains and overcrowding, which is of particular significance to MTR Elizabeth line due to the high frequency of our service. We have also seen the impact of global warming in CP6, which could result in further incidents of extreme weather in CP7, with an impact on safety and train performance. We are concerned that Network Rail is not sufficiently funded to mitigate this risk and/or respond to any incidents. There does not appear to be funding to make significant improvements to the resilience of the infrastructure for the increasing likelihood of extreme heat, convective rainfall / flooding and associated earthworks risk, snow and wind. In addition, Network Rail do not seem to have the detailed knowledge of their assets to make targeted investment decisions such as these. As a mitigation, we have operational work-arounds that severely impinge operational performance.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

We note that the intention is that the Fixed Track Access Charge (FTAC) will continue to cover the fixed costs the network that are not met by the Network Grant. We support this approach, but suggest that the ORR publish the FTAC payable by MTR Elizabeth line both with and without Network Grant payments. We will also comment on the proposed access charge mark up for airport services when this proposal is finalised. We are concerned about the high level of Long Term Charge applied to a number of our stations, which does not reflect the considerable work undertaken to enhance these stations as part of the Crossrail project, which should result in lower renewal and maintenance costs. We note that the Variable Track Access Charge (VTAC) has increased, whilst the volume of rail traffic has declined. The VTAC is supposed to capture the marginal cost of train service operation so if there is lower mileage there should be less cost, although the increase in the cost of associated maintenance activities also needs to be taken into account. Any split between VUC and FTAC needs to ensure that only costs that are genuinely fixed are included in the FTAC to ensure the railway is as efficient as possible.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

We are concerned that the very significant reduction to Network Rail Schedule 8 payment rates is inappropriate and will not incentivise Network Rail to manage performance effectively. We are also concerned about the proposed suspension of Schedule 8 payments between Great British Railways and its Operators and the ability for their Operators to 'opt out' of Schedule 4. These financial flows provide an important way of directly incentivising good performance and possession management that should not be lost or replaced with less direct incentives to ensure the ongoing growth of the rail travel market. Schedule 8 and Schedule 4 remain vitally important as a compensation mechanism for MTR Elizabeth line, as this is not a flow back to DfT under a National Rail Contract. This flows back to TfL to compensate for their revenue loss and other costs. CP7 provides the opportunity to be clear about consequential revenue lost across regional networks like TfL. We are concerned that the alternative measures for incentivising Network Rail and DfT Operators will be insufficient. We also note that the proposed Network Rail Schedule 8 payment rates do not reflect the cost of 'delay repay' and similar schemes. Schedule 8 makes for a useful proxy to calculate cost benefit for performance improvement initiatives, so its reduction / removal requires a different metric. We welcome the opportunity for mid-Control Period recalibrations, where appropriate, due to the current uncertainty with the rail market. The Network Rail scorecards should also be appropriately weighted to reflect the importance of train performance.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

No comments

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

No comments

Any other comments on managing change.

No comments

13. Are there any other comments you would like to make?

No comments

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Consent

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.

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This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

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Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Northern Trains Limited (NTL)

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

Northern (NTL) is driving an ambitious programme of transformation and focusing on growth from the Covid pandemic. NTL is working in partnership with Network Rail in delivering value to the customers, and therefore critical that Network Rail delivers and goes beyond its outputs in CP7. With ORR we plan to jointly hold Network Rail to account, and continually challenge them to develop and implement plans to improve performance and provide value to customers in the North of England.

Having engaged with Network Rails CP7 Strategic Business Plans (SPBs), NTL generally supports the areas of challenge the ORR has raised, particularly around Market Led approach and modernisation of maintenance programme.

NTL is concerned that the narrative of the draft determination reads positively with a funding envelope of £44.8 billion, which is an increase on CP6. However, a 11% fall in renewals expenditure, higher reliance on maintenance activities and using more operational controls. This all results in a negative long term asset sustainability by the end of CP7 and make delivering ambitious performance targets challenging. This is particularly the case for NTL when taking into account Network Rail's Market Led approach on prioritising expenditure and the nature of the train service geography NTL operates.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

NTL supports ORR's challenges to the Network Rail Eastern, NW&C Regions & System Operators CP7 plans.

NTL would challenge the ORR on having separate regions settlements. As Passenger Operators work across regions, the different approaches and use of the settlement are clearly different, which does not provide continuity for operators. Also, National Passenger Operator and Freight operators which operator over several regions are managed by System Operator, there needs to be careful consideration as to those operators' relationships managed by one route/ region despite the operation been across multiple regions are not unduly disadvantaged when compared with national operators who relationship is looked after by System Operator.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

NTL provided their priorities for Network Rail Regional SBPs. There has been some good engagement through NTL Board updates, NTL attended Eastern regions stakeholder event and a workshop to discuss Network Rail's Regional SBP. However, this has mainly been a high-level discussion of Network Rail's Route/Region strategic priorities and approaches they have taken to form their SBPs. There has been limited discussion on SBP work banks and prioritising them together in a financial constraint environment to do the best for customers. NTL also has had very limited engagement with System Operators SPB for CP7.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

NTL is supportive of the ORR's challenge for more ambitious performance trajectories. As despite post-covid changes to customer behaviour, it should be noted that the most recent work by Passenger Focus is still reporting that the service punctuality & reliability is by far the most important factor for overall journey satisfaction and is a key driver of Net Promoter that will attract new custom to our railway. However, NTL have the following concerns with train performance outcomes.

On Time as a success measure.

NTL believes that On Time is the wrong success measure for train performance, as it could drive perverse behaviours, plus will not have a useful practical application for customers or stakeholder facing information. The metrics may also be in conflict with each other which could drive the wrong type of decision making, i.e. to improve on time NTL will need to add more resilience into timetables, make journeys longer making rail less appealing. A practical example of this would be in order to bring trains back to 'on time' quicker post incident NTL may need to cancel more services thus impacting a far greater number of customers whilst also increasing cancellations.

There is also a potential conflict here with evidence the ORR has presented to the Sch 4 & 8 Passenger Recalibration Working Group regarding how passengers respond to disruption. This shows a weaking of the link between disruption and revenue loss. This therefore implies passengers' attitudes and behaviours have changed and would focusing of T-0 add value to the industry. NTL would also like to challenge how the industry will move to accurately measuring on time in order to make good decisions and better use data. Current systems to manage train service delivery and performance e.g. TRUST are unable to accurately measure 'on time' performance.

This is another big step change for the industry, when the industry is just starting to adapt and embed T-3 into its ways of workings and behaviours. NTL would like to point out on the one hand the ORR has a desire to return performance levels to what they were in previous Control Periods, however the data and funding position for performance does not match this strategic ambition, plus NTL is targeted and incentivised by the Client (DfT) on T-3. NTL request the ORR reconsider this and stick to T-3 as the success measures for train performance in PR23.

ORR PR23 & DfT Annual Business Plan misalignment.

For NTL the DfT Annual Business Planning process is the way NTL currently set out their plans and funding commitments with the Client (DfT). NTL must point out the misalignment between the timelines and processes of train performance target setting through the Regulator (ORR) and through the Client (DfT). This misalignment allows a lack of a coherent all industry system output to train performance. An example of this is All Cancellation target in PR23 of 2.3%. NTL agreed CP6 exit All Cancellation MAA is 4.3%. It would appear to achieve the CP7 Yr 1 output of 2.3%, NTL would need to improve at a significant trajectory which it is currently not funded for. Can the ORR confirm how they can address this misalignment?

Other point

The nature of NTL train service geography means there are interdependencies and impact on multi Network Rail Routes/Regions. There is a significant difference between the forecasted performance of the NW&C & Eastern regions through CP7. NTL have a number of service groups which work across both regions, there will be impact of services that are less on time exiting one region travelling on to another and vice versa. How has the ORR factored these differentials and the impact into their analysis and PR23 trajectories?

Performance Improvement & Innovation Fund (PIIF)

NTL is pleased to see the development of the CP6 PIF, into the CP7 PIIF, as have benefit from funding to allow for the development of schemes that would not have had a chance of development under normal business operations. However, NTL believes the PIIF needs to be larger in order to incorporate performance improvement. As the fund could be seen to close the gap in performance improvement funding in light of the changes proposed to Schedule 8 payment rates which are significantly lower than PR18 which will make business cases less appealing. NTL would like the ORR to review how successful PIIF schemes would secure business cases & funding to roll out across the industry.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

NTL has no comments.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

NTL has no comments.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

NTL has no comments.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

NTL supports the ORR's challenges to Network Rail SPB in terms of H&S. NTL however has concerns with the following:

Market Led Approach.

Network Rail SBP mentions Market Led approach, which is been used to prioritise expenditure on high value lines, leading to lower value line's having more reactive approach to maintenance and use of operational restrictions. In the NW&C region this approach has involved assigning a Value of Service to lines across the region.

NTL has limited awareness of this approach and does not know the methodology Network Rail in using within its Market Led or Value of Service approach to determine the different line values. NTL is concerned around the performance implications of any lower levels of investment, reactive maintenance, and operational restrictions such as speed restrictions. This would negatively impact on customers, driving them away from rail and further lowering the value of these services. Also linked to NTL's challenge on the Schedule 8 recalibration methodology, NTL believe that NTL would not be appropriately compensated for these performance impacts.

This is a major concern, as the nature of NTL operation, NTL receives a high level of subsidy to operator train services that connect people in the North of England and by doing so brings wider social, economic & environmental value. Northern adds £1.25 billion to the UK economy every year.

NTL expects the ORR to ensure any Market Led approach or prioritisation mechanism Network Rail uses includes Social and Economic value, then just passenger revenue data and is a joint process between operators and Network Rail to prioritisation expenditure that adds value to customers.

Network Rail Maintenance
NTL is concerned with a 11% fall in renewals expenditure and higher reliance on maintenance activities and using more operational controls. NTL question is Network

Rail prepared for this both in resource and funding. Overall maintenance expenditure for England and Wales is increasing by 1.3% compared to CP6. However, in NW&C region there is a decrease of 0.9%. Also, it is estimated there will be on average a 6.4% increase in maintenance activity due to delayed renewals and an aging asset base.

Network Rail Maintenance plan is particularly important to NTL, when taking into the Market Led approach as a high proportion of NTLs geography will not be classed as high value of service and will be subject to increased maintenance and operational control. NTL request the ORR take this in account then securitising Network Rail's maintenance plans.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

EC4T

NTL understands that this approach has been taken to incentivise uptake of OTM, however, with the Generic Consumption rates been removed, there is a disproportionate risk to NTL, if NTL were to obtain cascaded legacy stock or move current Class 769's on to a new route. Although overspend can be recouped via the wash up process, this is only partial and is split between other ESTA operators.

NTL are currently undergoing a programme of OTM fitment; however, it has been identified that the Class 769 Units are not suitable to undergo fitment due to their short, expected lifespan. In addition, NTL are likely to get old, cascaded units from other TOC's and these are likely to be units that have not been fitted with OTM. NTL would therefore result in incur default rates until fitment is undertaken.

NTL notes that the highest rate is for a 9-car unit, where NTL only operate at most 6-car. It appears that this will adversely affect regional TOCs more than long distance/London TOCs. The aim of the charge is to recover the costs of traction electricity supplied to train operators, however, by use of default rates, this vastly overestimates NTL's consumption. We would question that given that both NTL and Network Rail are Government owned bodies, that this does not represent good value for taxpayer money.

VUC

NTL have noted that freight and charter operators will not see their VUC rates increase to cost-reflective levels and maintain that these operators should be treated the same as passenger operators.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

NTL has been in attendance of the ORR's Schedule 4 & 8 Passenger Recalibration Working Group for PR23. NTL welcomes the ORR decision to create a new 'in-period' recalibration mechanism for Schedule 8 in CP7 in the event of a material change in circumstances.

NTL through the recalibration process has made it clear they do not agree with the proposed changes to the methodology of recalibration of Network Rail Payment Rates (NRPR) for PR23. NTL have concerns in accepting the results of the new evidence presented and some of the technical assumptions used for the proposed Semi Elasticity methodology.

Performance Incentives

The ORR defined the objectives for Schedule 8 in PR23 in terms of performance incentives as:-

- To provide **incentives for the infrastructure manager** to minimise disruption and improve performance on the network for the benefit of customers.
- To provide **incentives for train operators** and freight operators to minimise disruption and improve train performance for the benefit of customers.
- To **provide consistent performance incentives** across the industry (for example between different industry parties and different industry incentive regimes).

NTL maintains that the recalibrated draft NRPRs will significantly reduce the value of performance that forms the basis for many industry business cases including locally owned and resource deployment schemes. It will also undermine the case for many strategic cross industry programmes with assumptions based on improved reliability. This in turn will lead to a negative impact on future performance and drive the wrong associated behaviours.

NTL is in the opinion of the proposed NRPRs do not support the ORR first objective for Sch 8 in PR23, and NTL has not received any evidence presented by ORR or Network Rail, that the revised Sch 8 NRPRs truly incentivise performance improvement for the benefit of customers, only arguments towards the accuracy of them.

Schedule 4 & Engineering Access

NTL also notes the proposal significantly reduce rates payable under Schedule 4. From our understanding NTL believe that the future formulaic compensation payable for Type 1 possessions would not properly compensate the TOC for the revenue lost and leave the TOC effectively subsidising Network Rail maintenance and renewal activities. NTL do not agree with the assumption that underpins these lower rates that the vast majority of customers will continue to travel by rail replacement services. This will make the TOC less inclined to accept access requests making it harder and more expensive for Network Rail to carry out those maintenance and renewal activities.

Summary

NTL remains unable to support the proposed recalibration methodology and approach for Network Rail Payment Rate for PR23.

NTL understands that customer attitudes and behaviours have been impacted by the COVID pandemic and would request the ORR to obtain further evidence either through new studies or industry information to ensure any changes truly reflect customers behaviours and the industry post the pandemic before making any significant changes, plus the ORR need to ensure the industry can manage the consequences of such a change.

Despite these post-covid changes to customer behaviour, it should be noted that the most recent work by Passenger Focus is still reporting that the Service Punctuality & Reliability is by far the most important factor for overall journey satisfaction and is a key driver of Net Promoter that will attract new custom to our railway.

NTL will remain engage with the recalibration consultation and look forwards to the ORR final decision.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

NTL is concerned with the decision to reducing the maximum length of time between dilution event being triggered and an additional FTAC payment from operators from 3 months to 1 months. NTL issue is that 1 month notice is insufficient time for NTL to plan out cashflow and believes this is why it was 3 months originally. Also, NTL would need to get it signed off through governance with the Client (DfT).

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of*

Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.

NTL has no comments.

Any other comments on managing change.

NTL has no comments.

13. Are there any other comments you would like to make?

NTL has the following comments and questions:

- NTL notes that there is limited discussion on innovation within maintenance, even though Network Rail maintenance will have increased activity but with less.
- What has the impacts of Network Rail not delivering their CP6 plan been and how has this been taken into account in the PR23 review and Network Rail CP7 SBP?
- What level of confidence does the ORR have in Network Rail ability to deliver their CP7 SBP?

Annex A: Publishing your response

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Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Rail Partners

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

Rail Partners is broadly supportive of the draft determination on behalf of its passenger owning group and freight operating company members. We appreciate the continued engagement between ORR and our members during PR23. We also acknowledge that this periodic review has taken place in an uncertain time for the rail industry as it awaits structural change through the reform process, while wider economic challenges affecting the country also persist. Against this backdrop, we understand the need for additional flexibility within the regulatory regime to account for this uncertainty. We also agree with the ORR's approach during PR23 to make limited, proportionate changes to the regulatory regime ahead of CP7 which will help to give further stability.

We welcome the stance ORR has taken with regards to the performance trajectories proposed by Network Rail in its Strategic Business Plans but consider that a further adjustment to Network Rail's performance benchmark is required to account for the projected reduction in network mileage in CP7 so that the methodological approach is consistent with other elements of the performance regime. Performance during CP6 has been unacceptable with both the Passenger Performance Measure and Freight Delivery Metric reaching some of their lowest points since both measures were introduced. We recognise the impact of industrial action on performance and the challenges Network Rail has faced in recovering the engineering backlog post-Covid, but sustained poor network performance is stifling the recovery of passenger demand and suppressing freight growth. Reassuringly, performance has recently turned a corner, coinciding with an increase in regulatory scrutiny from ORR.

We also expect ORR to use the outcomes framework to closely monitor Network Rail's performance across its regions and the system operator during CP7. Rail Partners considers that the Network Rail scorecards approach has not worked effectively in CP6 and a focus on fewer Tier 1 measures using the outcomes framework can help to give greater focus and improve accountability on the metrics that matter most to passengers and freight customers. Where there are signs of underperformance, it is important that ORR acts promptly to challenge Network Rail to establish plans to improve performance making greater use of the regulatory levers at its disposal. This is necessary to provide private sector operators with confidence that a high performing network will be delivered on a long-term basis underpinning investment and supporting rail growth. The performance regime must also support this objective. In our response, we outline some of our concerns with the proposed significant reduction in Network Rail payment rates to TOCs which run the risk of diluting the incentives of the Schedule 8 mechanism on the infrastructure manager resulting in even worse performance and further deterring passengers from using rail. Rail Partners' passenger members therefore support the ORR's decision in August 2023 not to implement the new payment rates in full during CP7. Particularly in light of this new information, our freight members consider that a similar adjustment should be applied to the freight benchmark and cancellations threshold to ensure that the regime is well calibrated and drives the right incentives.

On charging, we have reservations about the methodology ORR has used to calculate charges and are concerned about the impact this will have on the ability of commercial passenger and freight services to compete with other modes. We believe that ORR could be more creative in its thinking around charging to promote rail growth whilst still being consistent with the legislative requirements. The Draft Determination indicates that passenger and freight VUC rates across CP7 will increase by 7% and 18% respectively in real terms compared to CP6, this is despite Network Rail forecasting that service levels will be 88% compared to pre-Covid levels – something which we consider to be unambitious. We would welcome further clarification from ORR as to how these charges have been calculated, especially as Network Rail has become more efficient during CP6. As VUC rates are set to recover the short run marginal costs it appears inconsistent for passenger charges to increase in real terms, in part to account for the projected reduction in traffic. We believe that ORR's approach does not comply with the legislative requirements. On freight, we support the decision not to update the phase in of VUC rates at the PR23 trajectory, but freight charges are still rising significantly which will affect the sector's ability to compete with road freight and is entirely inconsistent with the freight growth target. We consider that a more holistic approach to charging is required to send appropriate price signals to customers about which mode they use.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

We support the ORR's decision to insist on a point target for the performance measures assessed within the Network Rail outcomes framework, rather than accept the range approach that Network Rail had proposed in its Strategic Business Plans. Setting a specific target is important as it gives clarity to industry and makes it easier to hold the infrastructure manager to account. We also agree with the ORR's decision to challenge Network Rail to be more ambitious in the performance trajectories it has set out, which avoids 'baking in' poor performance experienced during CP6 and sends a clear message around the importance of performance to passengers and freight customers.

With the constrained funding available we agree with the recommendations of the ORR that Network Rail regions should prioritise investment to mitigate asset depreciation and improve network resilience. This includes additional renewals expenditure, and additional funding for earthworks and vegetation management to avoid having to close down routes. We agree that additional efficiency challenges and reprioritisation of some activity should be used to fund this work.

On freight, we welcome the £72m within Network Rail's Strategic Business Plan to invest in structures to support heavy axle weights. Within this limited funding it is important that structures at greater risk of having their capability degraded, or routes that support high volumes of freight traffic are prioritised. Our engagement with freight operators has indicated that many of these structures are in the Southern and Eastern regions, so it is important that the funding is allocated in a way that reflects this. As a wider point, we support ORR's concerns that Network Rail is not maintaining the network to the Network Capability it is funded to deliver. This is something which should be addressed to avoid the risk that bulk freight services are unable to operate on certain lines where they have contractual rights to do so.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

In keeping with the ORR's views on Network Rail's stakeholder engagement, we understand that engagement has varied significantly depending on the Network Rail region. Looking ahead, we would welcome a more consistent and joined-up approach to engagement across Network Rail's regions – particularly to benefit national passenger and freight operators whose services cross NR's regional boundaries.

We understand that Network Rail's ability to engage with stakeholders has been limited in part due to the late publication of the high-level output specifications (HLOS) and Statements of Funds Available (SoFAs). The subsequent delay in the publication of their Strategic Business Plans has also made it difficult to engage and seek operator feedback. We recognise that this is largely outside of Network Rail's control and caused by wider economic and political pressures. However, this has undoubtedly compromised the ability of operators, as Network Rail's customers, to influence and challenge Network Rail's plans to deliver for them. Where engagement has been sought it has often occurred at very short notice, placing a high requirement on operators' limited resource. The lack of transparency during the business planning process has led to additional uncertainty during this periodic review compared to previous ones. This is something that must be improved during PR28.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

Rail Partners welcomes the proposed outcomes framework outlined by ORR in the draft determination. We agree with the movement away from the scorecard approach, which train operators do not consider has worked during CP6. We support the use of a select number of Tier 1 success measures and agree with the metrics ORR has selected at this level as they are well aligned with outcomes railway users value most from the railway.

As ORR will publicly report on these success measures, it will give Network Rail a clear incentive to focus on their delivery and it will also help to improve accountability. It is recognised that ORR will continue to monitor a wider range of metrics through its Tier 2 'supporting measures' and Tier 3 'additional assurance' measures as part of its routine monitoring. We do not agree that ORR should not publicly report on these measures. Reputational incentives are the most powerful tool that ORR possesses, and it should use them to the full. It should monitor all measures closely as they may help to highlight the causes underpinning underperformance against some of the Tier 1 metrics. Furthermore, subject to the proposed change process, ORR must be able to elevate measures to higher tiers as it deems necessary should it consider that Network Rail is significantly underperforming in some areas, to ensure that the infrastructure manager is duly focussed on improvements.

The strong focus on performance in the Tier 1 measures is welcome. In particular, the inclusion of cancellations as a Tier 1 measure for both passenger and freight operators is welcome as rail users face greater disruption when their trains are cancelled rather than delayed. Punctuality is a factor passengers and freight customers value highly when using rail, but through CP6 performance has declined – suppressing freight growth opportunities and the return of a financially sustainable passenger railway. It should also be noted that a significant proportion of train operators' fees within their current National Rail Contracts are reliant on good network performance. In addition to ORR's decision to largely reject the performance trajectories set out by Network Rail in its Strategic Business Plan on the basis that they were unambitious and risked baking in the poor performance experienced during CP6, the focus on performance in the outcomes framework sets out a clear message that performance, particularly sustained disruption, must improve and will be closely monitored by ORR during CP7. The Network Rail freight benchmark has not been adjusted to account for the forecast reduction in mileage during CP7, leading to a more lenient benchmark when accounting for CP7 forecast mileages. This runs counter to the strong messaging about performance in the draft determination.

In our response to the PR23 policy framework consultation, Rail Partners proposed that freight growth was included as a 'Tier 1' measure reflecting that it was a government priority. We are pleased to see that the ORR has agreed with this proposition as confirmed in its holding Network Rail to account policy consultation. We also agree with using the freight moved metric which captures both tonnage and distance. Installing freight growth as a success measure will ensure that all Network Rail's regions are focussed on delivering for freight on their infrastructure and will help to achieve a greater level of awareness of freight customers' requirements from the rail network. We do not believe that, overall, ORR's Draft Determination is consistent with achieving the freight growth target, particularly in relation to the access charging proposals. As stated in our response to question 1, ORR needs to be more creative in its approach to access charges.

It is important that ORR monitors the delivery of freight growth closely to ensure that Network Rail and freight operators collectively remain on track. Freight operators will work closely with Network Rail to identify where the opportunities for growth are so that they can provide the capacity to accommodate an increase in freight services and enable existing services to become more productive, building on the successes of longer, heavier, and more direct trains which were possible during the pandemic.

We also support the inclusion of asset sustainability as a Tier 1 measure. The messaging in the draft determination around asset sustainability is concerning as assets are expected to age significantly during CP7, which will affect the performance of passenger and freight services. While the funding available necessitates some asset depreciation, minimising the impact of this must be a core focus of ORR and Network Rail during the next Control Period. This is clearly also important from a safety perspective.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

Accessibility is a priority for the rail industry and must be dealt with through a cross-industry approach to ensure that the railway is accessible to rail passengers. As an industry we must continue to strive towards a service where all passengers can turn up and go. Recent figures from ORR's 2023 annual rail consumer report highlight that demand for passenger assistance continues to increase, and that broadly passengers are satisfied with the service they receive, but train operators must continue to improve the service they provide. There is also a key role for Network Rail as the infrastructure manager to improve the accessibility at stations.

We note ORR's view that a safety success measure is not required within Network Rail's outcomes framework. This is because there is already a range of legal obligations on Network Rail to provide accessible infrastructure. ORR already has a duty to ensure Network Rail is meeting its regulatory requirements in this regard. We encourage ORR to monitor and enforce the industry's obligations in relation to accessibility.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

Rail Partners welcomes the funding made available in the SoFA allocation, which represents a real terms increase, despite the challenging economic environment, and significant additional funding made available by government during CP6 to support the continuation of rail services during Covid. We recognise that despite this real term increase, there will be significant cost pressures facing Network Rail which will require it to act efficiently and prioritise its activities to deliver for passengers, freight customers and funders. It will also restrict Network Rail's ability to take a whole-life cost approach to its asset maintenance and renewal activity, leading to additional cost challenges in future control periods.

It is important that the final determination accounts for the uncertainty of future inflation and the impact it could have on the ability of Network Rail to deliver renewals activities. Rail Partners therefore agrees with the ORR's view that the risk provision outlined in Network Rail's SBP was insufficient in this regard. The risk adjusted provisions appears more sensible in order to account for this economic uncertainty.

The impacts of climate change have had a significant impact on network performance during CP6, and improved network resilience must be a priority to restore train operator confidence in the performance of the network. We agree with ORR's decision that additional structures at risk should be renewed with reallocated funding from a reprioritisation of activity and efficiency challenge. This includes core asset funding for earthworks across some of the Network Rail regions, which is welcome as earthworks have been a long-standing issue affecting network performance. The approach to prioritise available funding towards higher income routes also appears logical to prevent disruption to services which make a significant contribution to farebox revenue. This approach must also consider routes which have a high volume of freight traffic.

We note that given the funding available for renewals and maintenance, Network Rail might have to make use of operational measures such as speed restrictions to mitigate potential safety impacts of lower than required renewals expenditure. This is not in the interests of passengers or freight customers and will affect the ability of rail to compete with other modes. ORR must ensure, as far as possible, that this measure is used sparingly through its monitoring of asset sustainability to ensure that further reprioritisation of renewals occurs during the control period if necessary. Regarding asset sustainability, Network Rail notes that it does not expect to recover asset condition and performance to CP6 exit levels until CP11 in England and Wales, and CP12 in Scotland. This is deeply concerning for rail users and is a significant risk that network performance could continue to decline. There is a pressing need for a longer-term approach to asset management to avoid further decline and maintain asset performance levels over the longer-term.

Rail Partners supports the Performance Innovation and Improvement Fund (PIIF) which will help to improve the performance of passenger and freight services. In our response to the financial framework consultation, we highlighted the value our members have found from the Performance Improvement Fund during CP6. The improved governance for CP7 is welcome and will ensure that the funding is allocated as efficiently as possible to maximise the improvements realised from the PIIF.

To address the cost challenges facing Network Rail in CP7, the infrastructure manager should be encouraged to identify opportunities to increase other income streams. This includes maximising the value from Network Rail owned properties.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

Rail Partners recognises that the regulatory approach to Network Rail's National Functions must be proportionate given that the focus of ORR's regulation via the outcomes framework will be on Network Rail's regions and system operator where most of its funding is allocated. That said, with constrained levels of funding in CP7 it is important that all units of Network Rail are challenged to deliver efficiently so that the envelope of funding made available in the SoFA extends as far as possible.

We welcome ORR's challenge to Route Services on the costs outlined in the SBPs. We agree with the decision to apply an additional efficiency challenge so that its funding is more consistent with that allocated during CP6. This will create additional funding for renewals that are much needed to deliver a high-performing rail network for passenger and freight operators.

As a wider point, the National Functions will be able to deliver more efficiently if there is regular engagement with Network Rail's regional functions. We note ORR's view that this has improved, and we encourage Network Rail to ensure this continues during CP7.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

Despite the constrained funding available in CP7, it is critical that safety on the rail network is not compromised. Rail Partners is therefore reassured that Network Rail considers that its approach to asset management in CP7 will not result in a reduction in safety for customers and staff. We recognise that Network Rail intends to use a Market-Led approach to prioritise expenditure on high value routes. While this appears logical, the approach must continue to closely monitor risk on other lines too so that safety is not compromised.

Network Rail's management of earthworks and drainage in CP6 has been suboptimal and we agree with the ORR's view that the recommendations of the Weather Risk Task Force must be integrated within Network Rail's plans for CP7. With the growing impacts of climate change likely to present further challenges to rail infrastructure, and consequently safety in CP7, this must be a priority area for Network Rail. It is important that the infrastructure manager takes a more proactive approach to mitigating these risks during the Control Period to minimise disruption to services and ensure that safety levels are maintained. This should include clear lines of accountability between Network Rail's routes and regions. We note Network Rail's intention to use operational controls during the CP7 to mitigate these risks. As noted in response to question 6, we are concerned that this approach is not in the interest of passengers and freight customers, so such measures should be minimised where possible. While such measures can help to prevent safety risks, it should be noted that the introduction of operational controls such as speed restrictions will introduce new safety risks for Network Rail to manage.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

As Rail Partners has communicated to ORR through bilateral engagements following the publication of the draft determination, we have reservations with the approach to charging used by ORR in the periodic review. We do not believe that it is consistent with the legislative requirements.

The draft determination indicates that VUC rates will increase in real terms for passenger operators by 7% on average during CP7 – though the actual increase will depend on vehicle type. Such a steep increase, which is meant to represent the short-run marginal cost of changes in traffic levels (the EU's definition of costs directly incurred) is inconsistent with Network Rail's SBPs which assume a substantial reduction in network traffic largely due to the modelled reduction in passenger services – which may not materialise should passenger operators be given the contractual freedoms and incentives to recover passenger numbers. ORR notes that this reduction in passenger traffic is a factor leading to an increase in VUC rates. This is illogical and does not satisfy the costs directly incurred legal requirement, which determines that variable charges are set to recover the short run marginal cost from the operation of each service. This indicates that the ORR's methodology, which we note has been used during previous control periods, is flawed. We would like to understand this methodology in greater detail and would welcome further engagement on this matter. As noted in the policy position paper, engagement with industry on the recalibrated rates has been limited which is concerning given the importance of the charging regime to any commercial operator.

Rail freight operates within a highly competitive freight and logistics sector, and the track access charges paid by rail freight companies determine rail's ability to compete with other more carbon-intensive modes such as road where charges including road fuel duty have remained unchanged in over a decade. Against this backdrop, we welcome the ORR's decision not to increase variable usage charges applied to freight services by the recalibrated PR23 trajectories, and instead continue to use the phase-in trajectory outlined during PR18. A £77m increase in VUC, as indicated by the PR23 recalibration methodology, would have been significantly detrimental to the commercial viability of rail freight services and suppressed freight growth that government is committed to. Even under the PR18 trajectory, VUC freight rates will increase by 18% on average in real terms, which represents a £41m increase over the course of the control period. We would like to understand from ORR how this is consistent with delivering the rail freight growth target. Setting charges on the basis of long-run efficient costs for Network Rail would be more in line with supporting the freight growth target and is something ORR has done in the past.

We note that the ORR still intends for freight VUC caps to be unwound through CP8, which creates a major cliff edge for the rail freight industry. It is therefore important that there is early engagement with the ORR and funders during CP7 ahead of PR28 to identify a long-term solution to rail freight charges which satisfy regulatory and legal requirements while supporting the growth of rail freight services and the government's decarbonisation agenda. This would include taking a cross-modal view of freight charges, so that pricing better captures the externalities of different freight services. Rail Partners has previously called for the charging regime to incentivise operators to operate using low-carbon traction (e.g. electric or sustainable fuels) through discounts in track access charges.

We note the proposal to keep Infrastructure Cost Charges (ICC) broadly constant in real terms (£5 per train mile), for interurban open access services. Open access passenger services play an important role within the GB rail market, by creating competition and therefore customer choice with existing DfT contracted operators. Open access train operators have improved service quality within the markets they serve, grown passenger demand and improved connectivity. As such, it is important that the regulatory settlement supports an enhanced role for open access services, while recognising the ORR's duty to have consideration for the funds available to the Secretary of State. While imposing ICCs on open access services clearly affects the commercial viability of these services, in CP6 it has not stopped the successful introduction of a new open access service, Lumo. Rail Partners also notes that additional open access services between London and Wales are due to start shortly, with a further application to run services between London and Stirling also submitted for ORR's consideration. Therefore, it seems appropriate to continue to impose an ICC on open access services in CP7 where the criteria are satisfied, subject to the same phase-in arrangements which acknowledge the significant start-up costs associated with commencing a new service (e.g. procurement of rolling stock). We also note that ORR is consulting on imposing an ICC for airport services at the same rate as interurban services. As there is currently only one open access service providing direct links to airports, and there has not been any recent applications to introduce new services, it is unclear whether this market could bear the additional cost and this proposal would instead deter investment and further limit the prospect of competition in these markets despite the aforementioned benefits to passengers.

We note that freight ICCs will fall, except for biomass services, and this is to account for the increase in VUCs and EAUCs paid by freight operators to ensure that the overall level of cost recovery is set at the right level and reflect each market's ability to bear the additional cost. While the reduction in ICCs is of course welcome, due to the rise in VUC rates, overall charges paid by freight operators will increase and will make rail freight less attractive to prospective customers, running counter to the government's strong commitment to rail freight growth and the decarbonisation agenda.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

While Rail Partners understands the rationale for providing the option for operators to opt out of Schedule 4 for the duration of CP7, both pre-empting future reform, and to reflect current contractual arrangements where many operators do not hold revenue risk, we are concerned about the impact his may have on the incentive properties of the possessions regime.

The principles of Schedule 4 are that it should incentivise Network Rail to provide operators reasonable notice ahead of engineering work and encourage them to undertake this work as efficiently as possible. This enables operators to inform customers such that they can make their travel plans in advance and helps to minimise disruption caused to passenger and freight services. A Schedule 4 opt out would mean that operators are no longer compensated for restrictions of use on the network, and it therefore seems unlikely that any commercial operator is likely to opt out of the regime in its entirety – noting that in CP6 open access passenger operators chose not to pay the Access Charge Supplement and therefore were only compensated in cases of severe disruption. Should a significant number of operators choose to opt out of Schedule 4, both for the entirety of CP7, or subject to the creation of GBR, Rail Partners is concerned that this will dilute the incentive properties of the regime on Network Rail – leading to more late notice possessions and overrunning engineering works. We would like to understand from ORR how the incentive properties of Schedule 4 will be replaced.

Already during CP6, with DfT operators no longer holding revenue risk, passenger and freight operators have reported an increase in the number of late notice possessions called by Network Rail. While initially this was understood to be necessary to address the backlog in engineering works following Covid, this behaviour has not subsided. Such disruption has a significant impact on passenger and freight operations and has also undermined customer confidence in rail services. Rail Partners has highlighted this in its response to the Informed Traveller Timeline consultation, which proposed moving the deadline formally from twelve to eight weeks – something which passenger owning groups and freight operators were strongly opposed to. We are pleased that ORR has decided not to pursue this proposal. This is a behaviour that must be deterred during CP7, and it is unclear how the introduction of an opt-out mechanism will promote this if Network Rail no longer needs to compensate some operators.

While ORR has issued assurance that the Schedule 8 performance regime will not be switched off for future GBR operators until GBR is established and they are satisfied that there is an alternative incentive arrangement in place, it is not clear how this regime will function. Further detail may arise when the GBRTT Commission recommendations are published or as more detail on the performance elements of future Passenger Service Contracts is shared. Rail Partners notes the joint GBRTT/Network Rail position that it would be beyond the ORR's regulatory role for it to have visibility of the financial incentives that GBR places on its operators. This appears to be important in order for the ORR to be satisfied that the future performance regime does encourage all parties to contribute to a high performing railway. It is understood that Schedule 8 will continue to apply to all non-GBR operators, which is welcome as any commercial operator will continue to value the incentives and protections provided by the regime, but there are concerns that the incentive properties will be heavily diluted if Schedule 8 does not apply to operators responsible for running most traffic on the network.

Regarding the ORR's decision to enable a mid-Control Period recalibration of Schedule 8, Rail Partners recognises the rationale for creating this option, particularly after the experiences of Covid on train services during CP6. The need for greater flexibility to respond to material changes in traffic levels or funding must be balanced against the benefits of a stable regime. It is therefore important that the threshold for a recalibration exercise to take place is set high to avoid uncertainty and deterring investment from commercial operators in assets and initiatives that improve performance. Rail Partners continues to see value in ORR also retaining the option for a time-limited recalibration to be undertaken which provides ORR with the option to return to the payment rates agreed prior to the beginning of the control period should it become apparent that the figures from the updated recalibration no longer reflect traffic on the network.

Rail Partners, on behalf of its passenger members, had significant reservations about the proposed new payment rates from Network Rail to TOCs, and the impact on the incentive properties of the regime. As noted in the PR23 consultation documents, and through our involvement in the passenger and freight recalibration working groups, it was proposed that Network Rail payment rates would be heavily reduced, by c.75% on average, due to the adoption of a new methodology modelling the impact of disruption to passenger services on revenue. Whilst passenger operators had previously agreed to the recalibration methodology, their owning groups have disagreed with the outcomes for reasons detailed below. We understand that ORR has now reconsidered this approach following engagement with both Rail Partners and its owning group members. While Rail Partners owning group members welcome the decision not to implement the new payment rate methodology in full, and instead use a blend of the PR18 and PR23 methodologies, we have outlined the rationale for our initial concerns below.

Through the recalibration working group, ORR will be aware that the freight operators' preference was for the new methodology for TOC payment rates to be implemented in full. This was on the basis that the change in methodology had previously been agreed by the passenger working group and any manual adjustment to the payment rates would affect the freight element of the regime. ORR's decision to use a balance between the PR18 and PR23 methodologies has been made to address concerns on the weaking of incentives on Network Rail and to avoid a large change in the payment rates in one step. While Rail Partners understands that ORR has made this compromise to avoid harming the performance incentives of the passenger performance regime, it raises the question why ORR was willing to diverge from the methodology on this matter while sticking rigidly to the methodology for freight elements in the Schedule 8 regime, despite similar concerns about the dilution of incentives on Network Rail and the impact of significant swings in regime being expressed.

The rationale for Rail Partners' passenger members views on the Network Rail payment rates are as follows. Firstly, such a significant reduction in the payment rates was inconsistent with the ORR's position to make limited, proportional changes during PR23. Secondly, as passenger traffic makes up the majority of the traffic on the network, a sizeable reduction in the payment rates would heavily dilute the incentives on Network Rail to limit the disruption it causes to train operators and is therefore inconsistent with the performance targets set out by ORR in the draft determination. This is particularly concerning as the current periodic review is taking place in the context of levels of poor network performance, affecting both passenger and freight services.

We know that passengers and freight customers value performance highly when deciding how they travel or move their goods. Diluting the incentives on Network Rail would likely worsen performance, making the railway less attractive to passengers and harming the recovery of passenger services. Delivering a high performing railway is key to delivering government's ambition to grow the rail freight market, and the efforts of industry to recover passenger numbers and achieve a financially sustainable rail industry. Diluting incentives on Network Rail risks undermining these ambitions. Furthermore, given the link between the performance and possessions regime, a reduction in the Schedule 8 payment rates would affect compensation TOCs receive when possessions and undertaken, which would not incentivise Network Rail to make efficient use of possessions. We also note that the semi-elasticities determined through the approach are only estimates and therefore are not necessarily reflective of the true relationship between disruption and revenue. Rail Partners' passenger members consider that it would be prudent to conduct a more thorough review of the new methodology before it is implemented. While not explicitly referenced within the Schedule 8 mechanism, there is also a link between the payment rates received by TOCs and the compensation paid to passengers via the delay repay mechanism. It is unclear how operators would have been able to cover the delay repayments for disruption outside of their control should Network Rail payment rates have fallen steeply as initially proposed.

Based on the above, Rail Partners' passenger members did not consider that it was appropriate to implement the new methodology in full in CP7. It was simply not credible to suggest that passenger behaviour to poor punctuality is 75% less than previously predicted. Therefore, ORR's decision to choose a payment rate that balances both the current and new methodologies and is constant throughout CP7 seems appropriate, avoiding a significant reduction in the payment rates for CP7 and therefore maintaining strong incentives on Network Rail. This will enable a more detailed review of the new methodology ahead of CP8 such that industry has greater confidence in its representativeness, particularly as the impacts of disruption on passenger demand post-Covid are likely to become much clearer.

Freight members understand that part of the rationale for setting the rates higher than the rates implied by the PR23 payment rate methodology was to minimise the swing and avoid diluting the incentives on Network Rail. However, a similar approach has not been adopted in the freight regime where similar concerns have been expressed. For instance, the 23% reduction in the FOC Benchmark and 40% increase to the cancellation threshold are both planned to be implemented in full for CP7. It is important that an adjustment is made to freight parts of the regime to minimise what would otherwise be a significant financial swing and avoid a dilution of the incentives on Network Rail to minimise cancellations to freight services – something which customers value highly.

Regarding FOC performance benchmarks, Rail Partners has outlined to the ORR through the recalibration working group that it considers it necessary to make an adjustment to the benchmark to account for two things. Firstly, recent FOC performance levels have been significantly worse than the proposed CP7 proposed benchmark, which is a consequence of the relatively historic period used for the recalibration exercise to avoid Covid-impacted years. Secondly, data provided by Network Rail to the recalibration working group has indicated that there has been an 18% rise in FOC-on-FOC interactions during 2022/23, compared to the 5-year recalibration period and this shows no signs of changing during CP7 given the increased diversification within the market. Rail Partners recognise that ORR has been clear that the threshold for making any adjustments to the recalibrated numbers in PR23 has been set high, but the threshold has never been articulated and there is now a precedence for adjusting following the ORR's decision to change its approach to the TOC payment rates in the Schedule 8 regime. Rail Partners would like to understand why the ORR deemed that the evidence presented by FOCs did not meet the threshold for an adjustment and would urge you to reconsider this view following new information concerning Network Rail payment rates.

It is right that the FOC benchmark is set at a level that incentivises operators to invest and innovate in order to limit the impact of their services on network performance. However, by setting a benchmark at a level that does not sufficiently account for current performance levels, which show no signs of subsiding in CP7, and the dynamics of the rail freight market, freight operators are unlikely to achieve their benchmark in many periods during the control period. This will have a significant financial impact and risks damaging the commercial viability of freight services, in turn affecting rail freight growth. Again, ORR needs to take a holistic view of all of the parameters of the regime in its final determination in order to support the freight growth target. It is crucial that decisions around Schedule 8 are taken holistically and consistent with other decisions on unwinding of caps on charges and consistent with policy objectives to avoid aspects of the periodic review pulling in opposite directions.

As a wider point, we are concerned that discussions about both the freight and Network Rail benchmarks have not occurred concurrently. Instead, ORR has indicated its intention not to adjust the freight operators' benchmark while discussions concerning the Network Rail benchmark remain ongoing with operators having limited visibility of these discussions. Such an approach does not allow freight operators to consider the Schedule 8 regime in CP7 in its totality.

Rail Partners would also note that the Network Rail freight benchmark has not been adjusted for a reduction in traffic whereas other elements of the regime have been. The proposed target based on 5% Freight Cancellations and Lateness (FCaL) compares against an equivalent FCaL target of 5.23% in CP6. If the CP6 FCaL target was to be adjusted by forecasted mileage changes in CP7, then the Network Rail Benchmark would be the equivalent of 4.89% FCaL. The effective softening of the Network Rail Benchmark in CP7 is again inconsistent with industry ambitions for a high-performing and reliable railway and we ask that there is more ambition applied. To ensure that the approach to benchmarking is conducted consistently, we believe it is necessary for the Network Rail benchmark to be adjusted accordingly.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

Consistent with Rail Partners' response to the financial framework consultation, we agree that the CP6 financial framework remains largely fit for purpose and limited changes are required. This is because the CP6 framework reflects that Network Rail is a publicly funded body and this has not changed. We recognise that overall decisions on the financial framework are subject to the approval from the Department for Transport and Transport Scotland as the funders of Network Rail's settlement.

The periodic review is taking place within a challenging economic environment and these pressures, particularly regarding inflation, are unlikely to subside by the time that CP7 commences. As such, it is key that ORR monitors Network Rail's finances closely to ensure that it is operating efficiently and will be able to deliver on the commitments set out within its Strategic Business Plans (subject to amendments proposed in the draft determination). Where wider economic circumstances mean that Network Rail is unable to deliver on any of its commitments, this should be communicated promptly to train operators as their primary customers.

Owing to the uncertainty described above, we agree that it is appropriate that ORR continues to monitor the capital costs ahead of the final determination to ensure that it remains appropriate within a volatile environment. We support ORR's approach to compare the proposed cost of capital outlined in Network Rail's SBPs with the values used by other regulated sectors in the UK. We support the adjustments to the *Total Market Return* and *Risk-free rate,* to ensure compliance with the guidance set out by the UK Regulators Network. ORR should closely monitor Network Rail's cost efficiency and require recovery plans if it is falling short.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

Rail Partners is broadly supportive of the of the proposed managing change policy and recognises that it has not changed substantively from the CP6 policy. As private sector businesses, the owning groups of passenger operators and FOCs will continue to value a stable regime which enables them to invest with certainty, therefore it is important that changes are limited and, if material, subject to an industry consultation process.

We understand that it is necessary to have a mechanism which provides flexibility for ORR to allow adjustments to Network Rail's plans and how they are regulated during the Control Period in order to reflect changes to the industry or the wider economic environment that are clearly outside of Network Rail's control. It is important that ORR is satisfied that changes are based on exogenous factors, and we welcome the requirement on Network Rail to demonstrate this. The proposal to reduce the number of 'levels' of change to three from four in this control period appears logical.

As addressed in response to question 4, Rail Partners supports the outcomes framework and the success measures proposed to monitor Network Rail's performance. We note that through the managing change policy, changes could be made to the baseline trajectories or methodologies used to calculate these headline measures. Such changes should not be made lightly as it risks undermining the effectiveness of the framework in holding Network Rail to account. It is critical that this mechanism is not used to 'bake in' underperformance. Although there Is merit to having a limited number of success measures to ensure focus and accountability on delivering, should it become clear during the control period that Network Rail is falling significantly short on some of the supporting measures within the framework and this is affecting the delivery of passenger and freight services, ORR must be able to use the managing change policy to escalate these measures.

13. Are there any other comments you would like to make?

None.

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Consent

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Ramblers

Email*: [Redacted]

Telephone number*: [Redacted]

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

n/a

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

n/a

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

n/a

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

n/a

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

n/a

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

n/a

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

n/a

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

The Ramblers is Britain's biggest walking charity, with over 100,000 members and representing the interests of millions of people who enjoy access to the outdoors. We promote, protect and enhance the nation's public rights of way network. This network is the primary means by which the public can get outdoors and has a critical role to play in delivering Department for Transport / wider government objectives to increase the number of journeys made on foot.

The focus of our response to the PR23 consultation relates to Network Rail's approach to health and safety, specifically on level crossings over which there exist non-vehicular public rights of way, for example footpaths and bridleways. Our primary message to the ORR is that its PR23 assessment of Network Rail's approach to health and safety should be more nuanced, to reflect the significant safety and enjoyment impacts on communities where Network Rail seeks to close public rights of way over level crossings.

Public rights of way have significant legal protections, a reflection of their importance to local communities and wider society. There are however provisions in legislation for changes to be made to public rights of way, including either their temporary or permanent closure. The Ramblers is regularly consulted by local highway authorities on proposals for such changes to the network.

We understand that Network Rail has legal obligations relating to the health and safety of the public, and that this includes level crossings over which there are public rights of way. We are however concerned that Network Rail has for many years adopted a disproportionate approach to public safety by seeking the widespread closure of such crossings[1]. There are three fundamental issues with this:

- There is a lack of evidence to support the need for many of these closures. Following a freedom of information request made to Network Rail in July 2023, the Ramblers found that since 2009 there were on average 3.5 fatalities per year in England, 0.3 in Wales, and 0.1 in Scotland. Clearly every fatality is tragic for all concerned, and we do not wish to suggest that public safety ought not to be taken seriously. But the response needs to be proportionate, and this leads to the second point immediately below.
- The approach fails to consider the serious impacts arising from resulting diversions which may force walkers onto unsafe roads without footways, particularly in rural areas, and which statistics[2] demonstrate are far more dangerous. It could be argued that the approach taken by Network Rail is often one which simply transfers the risk to walkers to other locations for which it is not responsible, and in the process increases the level of risk.
- It should also be recognised that level crossing closures can undermine the coherence and utility of the public rights of way network itself, severing communities from their primary means of enjoying and connecting with the outdoors, being active, improving their health and wellbeing and travelling to local amenities in a sustainable way.

[1] https://www.networkrail.co.uk/running-the-railway/our-routes/anglia/improving-the-railway-in-anglia/anglia-level-crossing-proposals/
https://www.networkrailmediacentre.co.uk/news/closure-dates-announced-for-levenmouth-railway-crossings#:~:text=Crossing%20points%20at%20Balgonie%2C%20Doubledykes,construct%20new%20bridges%20gets%20underway.
https://scotways.com/dalwhinnie/
[2] https://www.gov.uk/government/statistics/reported-road-casualties-great-britain-pedestrian-factsheet-2021/reported-road-casualties-great-britain-pedestrian-factsheet-2021
https://www.farmersguide.co.uk/rural/alarming-stats-reveal-country-roads-are-70-deadlier-than-urban-highways/#:~:text=Pedestrian%20fatalities%20on%20rural%20roads,car%20drivers%20and%20their%20passengers.

Having reviewed its England & Wales Strategic Business Plan for Control Period 7, we are concerned that the points above – which we have made repeatedly to Network Rail in recent years – are likely to continue to be ignored. This is because, on page 8 of the Business Plan, Network Rail state "*Our public safety strategy will focus on continuing to target level crossing closures and improvements…*"

In relation to the ORR consultation, we are concerned that statements in the PR23, and also from the Secretary of State, will encourage Network Rail to continue with this disproportionate approach. For example:

- "*We would welcome further details on Network Rail's plans for level crossings to understand how they will maintain and improve safety during CP7 in the reduced renewals environment*." (ORR, PR23 draft determination: Supporting document - health and safety, paragraph 2.65)
- "*The Secretary of State recognises that level crossings are a substantive contributor to the railway's overall risk and expects Network Rail to make progress in CP7 on improving user safety on level crossings that require renewal works…The Secretary of State also recognises that any progress on providing alternatives to level crossings must be achieved within the constraints of the funding envelope. He expects Network Rail to work with other relevant authorities on finding alternative solutions to level crossings, where this is the most appropriate way forward*." (Department for Transport, Railways Act 2005 statement: high level output specification 2022)

In its revised determination the ORR must make clear that Network Rail should consider the bigger picture in its approach to health and safety. Network Rail should (i) consider more carefully the evidence to support level crossing closures, (ii) be more proactive in identifying solutions with local stakeholders that are safe and no less enjoyable, and (iii) recognise the impact of their decisions on the coherence, utility and enjoyment of the public rights of ay network.

We would welcome the opportunity to discuss these matters in greater detail with the ORR as it finalises its determination for CP7.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

n/a

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

n/a

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

n/a

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

n/a

Any other comments on managing change.

n/a

13. Are there any other comments you would like to make?

n/a

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g., letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Rail Freight Group

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for NR in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

RFG is pleased to respond to this consultation. The Draft Determination is an important part of the Periodic Review and we are pleased that ORR has been able to publish this consultation in good time, and in particular that the NR draft price lists have been published considerably earlier than in PR18. This is helpful for freight operators and customers.

We recognise that this periodic review takes place in the face of the current fiscal challenges for the economy in general and the railways in particular. Rail freight operators and customers are faced with significant financial pressures, with the cost of living crisis reducing demand for goods, construction output levelling off and high inflation affecting operations. At the same time the economic downturn has softened road haulage prices, making it even harder for rail freight to compete. We also recognise that NR faces significant inflationary pressures in its business, and that some of the expected efficiency gains from rail reform may be delayed (albeit these were not fully clear to us).

In that context our overall view of the draft determination is that it strikes a fair balance for the industry overall, recognising the pressures it is likely to face over the next five years. In particular;

- We support the outputs measures for freight including the freight cancellations target and the freight growth target(s) being set as Tier 1 measures
- We are pleased that funding has been ringfenced for supporting RA10 operation across the network which is vital for heavy axle weight traffic
- We are pleased with the continuation of the FSIP fund for safety improvements in freight terminals.
- We support the decision to cap freight access charges at the levels expected from PR18 (albeit that this remains a significant increase particularly for bulk customers)

However, we do have concerns, including;

- How NR plan to prioritise their maintenance and renewal activities and the potential impact on freight
- The significant increases in variable access charges calculated for PR23 (albeit that we welcome the decision to cap at PR18 levels), and the lack of explanation for them
- The overall swing of risk from NR to freight operators through schedule 8 and schedule 4 adjustments, and the decision to hold passenger rate at a higher rate than first proposed, which increases costs for freight.

It is particularly important that the outstanding questions on variable access charges are resolved before the start of the control period, and necessary adjustments made. Although the capping of charges means that this would not change payment rates, it is essential that customers can have clear sight of the charges ahead, and that charges are set at an affordable level which can underpin future investments and growth.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

England and Wales Overview – please note our comments are relevant to the overall England and Wales summary. We have not reviewed the regional plans in detail.

We support the proposed outcomes framework and the proposed success measures. It is unclear why the freight growth target is not shown as part of the CP7 outcomes framework on Table 3.1 as paragraph 3.12 makes clear this is a 'success measure'. This should be corrected.

We are pleased that the ORR has taken a firm position on the targets for freight cancellations. The resilience and performance of rail is a key factor for businesses looking to use rail and although the targets are still higher than CP6 they are an improvement on the proposed range. Achieving the cancellations target will require NR both to manage network performance and also to plan engineering works to ensure diversionary routes are available wherever possible. ORR should give oversight to both areas in holding NR to account.

We note NRs plans on maintenance and renewals expenditure and the proposed adjustments. We have no comment on the details of this. However, it remains of concern that, although NR's total expenditure on maintenance and renewals has fallen, variable access charges have risen. This should be explained as it is at best counter-intuitive.

We remain concerned over NR's proposals to prioritise expenditure to support revenue generation. As freight revenue does not fall directly to NR/Government freight services are likely to be disadvantaged by this approach. ORR should ensure that NR's plans do not undermine their target for freight growth and that the impact on freight is fully understood. Equally if renewals are not being made to support freight, then this ought to be reflected in the charges that freight pay.

We note in para 5.5 that increased freight traffic is specifically mentioned as requiring an increase in maintenance. As freight charges compensate NR for wear and tear costs this should not be a specific concern, and it is essential that ORR ensure that freight is not disadvantaged by the prioritisation of work to high revenue passenger routes.

We note ORR assessment (para 7.3) that NR can generate more 'other income'. Freight customers on NR's tenanted estate have already seen significant rental increases since the land estate was devolved to the regions and it would be concerning if this was to continue further. Equally we would be concerned at any real terms increases in connection charges. Unused freight sites should not be unnecessarily disposed of, as they will be essential for meeting the long term growth aspirations.

We are pleased that ORR has chosen to cap freight access charges but have significant concerns over the recalibration – please see below. Please also see below for comments on the incentives framework.

Scotland Overview The majority of our comments on the England and Wales overview above are also relevant to the Scotland settlement.

We support the Scottish outputs framework, noting the specific freight growth target set for Scotland and the specific targets for freight cancellations.

We note that the Scottish HLOS makes a number of further requirements of NR Scotland relevant to rail freight, including on freight gauge, paths and cross border connections. It is essential that ORR hold NR to account on these requirements as well as the outcomes framework, and ORR should explicitly set out how it intends to do this.

System Operator The SO is a particularly important function for freight, not only as the national freight team sits within SO but because effective system operation is essential to maintain network performance and capability for cross regional operators. Overall, we support the conclusions in the SO settlement with the following comments

We welcome the £17m FSIP fund, and the continued funds for investment in technology, noting that the details are yet to be confirmed.

We agree with the comments in para 2.2 regarding the challenges faced by SO in delivering national outcomes in a devolved structure. It is essential that SO can focus on better outcomes for operators and customers, rather than on internal challenges and NR need to establish the right internal frameworks to support this, rather than leaving it to chance or to individual relationships. ORR need to be mindful of this when holding the SO to account, and focus not only on the outcomes but also on the systems and processes that NR has established overall.

We support draft decision 1.

We support draft decision 2, but note that it is imperative that heritage systems are modernised.

We support draft decision 3, and note that improved access planning is essential to the delivery of freight growth and to meeting the freight cancellations target. Keeping diversionary routes available during blocks, recognising freight customer needs alongside passengers and seeking to minimise disruptive blocks such as 1 week in 6 closures will be essential for freight growth, and need to be a key part of improved access planning.

We support draft decision 6, noting as above the interface between the SO and the regions in delivering outcomes for freight growth.

3. Our review of NR's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

Our engagement with the SO teams, and in some cases the regional teams has been good, and freight appears to have been taken into account well.

4. Our review of NR's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

As above.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

No comment

6. Our review of NR's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

We welcome the overall level of funding available for the railways in CP7. We note the expected pressures on maintenance and renewals in particular.

We note the progress that Network Rail have made on cost efficiency and the expected further efficiencies in CP7. Despite this, the cost reflective charges paid by freight customers are increasing again in real terms, and have done now on a sustained basis over several control periods. There appears to be a disconnect between the efficiencies being achieved by NR and the variable charges and this needs to be better understood and explained to customers. It is vital that efficiency savings are passed onto NR's customers under the framework which exists for charges.

As outlined above we note the risk to freight from prioritising activity on services which generate most revenue. We would be deeply concerned at any significant reduction in the capability of the network for freight arising from this, and the impact on customers. We welcome the safeguarded funding for structures to safeguard HAW capability.

7. Our review of NR's National Functions

For further information, please see our related supplementary document on national functions.

No comment

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

We welcome the continued funding for the freight FSIP fund.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

Overall, we welcome the ORR decision to cap variable usage charges for CP7 at the expected level but remain concerned over the increase in costs, the new PR23 rates, and the overall impact on freight customers.

The overall impact of these proposals, including charges and incentives, shows a further significant increase in cost and risk to freight operators. This comes at a time when there are major cost pressures on freight, from overall economic pressures, high inflation and a drop off in demand for freight movements by all modes. Other costs such as EC4T are also elevated, adding further pressure. In this environment it will be difficult to achieve the freight growth expected as rail will not be able to compete with road haulage. Whilst we understand that ORR is bounded by the regulations, it is imperative that ORR work to minimise the cost increases born by freight. The capping of charges is welcome in that regard, but there are significant questions over the recalibration of charges.

On the specific elements of the charges, we have no specific comments on the draft ICC rates. It is important that the rate for spent nuclear fuel is confirmed as soon as possible.

On VUC we note the decision to continue to retain the existing VUC phasing in policy from PR18. Whilst this is expected, it remains a very significant increase in VUC with some customers experiencing 20%+ increases over and above inflation over the control period. In the current environment this will be extremely challenging and any measures which could lessen the impact of this should be considered.

We are concerned that, despite significant improvements in NR efficiency, cost reflective rates continue to rise in each control period. There appears to be a disconnect between the VUC rates and NR costs. We would expect that, as NR becomes more efficient, rates should fall, and ORR may wish to consider why this is not happening.

We are particularly concerned with NR's recalibration of the VUC for PR23 and the further significant increase which has been proposed. It remains unclear what factors are driving the increase, whether they are justified and why it should be applied. It is essential that this is resolved ahead of the control period start.

Firstly, we do not understand why the average freight rates have increased by more than the average passenger rates given that the model used has not changed (as it did for PR18). We are also concerned to understand the range of increases by vehicle type and would welcome further information on this.

We do not understand why higher track costs are being applied to the VUC calculations when NR's overall maintenance and renewal costs have fallen. It would seem logical that the CP7 costs, which are lower than the CP6 costs should have been used in the modelling, noting that not all cost categories are variable. This needs to be clarified. The impact of the efficiency assumptions should also be clarified as we would have expected these to further reduce costs.

We do not accept that freight costs should increase as passenger services are at a lower level. As variable charges are set on the basis of short run marginal costs, reflecting the cost of each individual train alone, the number of other services operating should be irrelevant. We recognise that the structure of the VTISM model might lead to this outcome from the model, but there should be an adjustment to correct for this. We do not accept what is, in effect, a transfer of risk from Government to the private sector.

Although it is not mentioned in the consultation, we also understand that part of the rise relates to the treatment of inflation. The details of this need to be clarified, as it seems unreasonable that freight should be expected to 'pre pay' for inflation in its charges.

We are concerned that there does not appear to be any understanding of why these increases have arisen, and whether they are properly applied to freight. The ORR must act urgently to get a full understanding of the factors, and to confirm their appropriateness in the freight VUC calculation.

We recognise and are pleased that ORR has applied a cap so that the recalibrated charges will not immediately apply to customers. However, the threat of further increases into CP8 remains a significant concern, and will act to prevent modal shift and deter investment so it is imperative that this is resolved rapidly and ahead of April 2024.

We note the phasing in policy, and support it subject to the comments above.

In respect of para 3.33 we understand the proposals to review the modelling of charges early in CP7. It is essential that this work takes into account NR's efficiency targets and challenges where higher costs are being passed into variable charges. The overall affordability of rail for freight customers, and the rail freight growth target must also be taken into account.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

The S4 and S8 incentive regimes are particularly important in the contractual relationship between freight operators and NR. Freight customers may or may not be directly exposed in their contracts, but nonetheless expect to have a high performing railway and one where trains can operate without cancellations. In this context it is important that both regimes provide effective incentives, and do not expose freight operators or customers to unreasonable costs.

On S4 we are concerned by the 40% increase in the cancellation threshold which will have a detrimental effect on freight and a beneficial impact on NR. This appears to be at odds with the Tier 1 target on freight cancellations (which includes those trains cancelled for possessions). ORR should consider whether such a significant swing is acceptable and whether the overall impact on freight operators is justified.

On S8 we understand that there are significant political imperatives arising from rail reform and future proposals for the operation of passenger contracts. Despite this it remains the case that freight operators need an effective regime that incentivises the right behaviours on both parties and applies appropriate compensation. It is also essential that the freight operators can have certainty over the regime over the control period and can plan accordingly.

The recalibration of S8 is necessarily complex and it is essential that the freight benchmark, passenger and freight payment rates and other areas such as liability caps are assessed in the round, as changes in one area will impact others. It is not clear that this holistic assessment has been done, and it is essential that it is looked at for freight as different options continue to be assessed for passenger operators. It is essential that freight has certainty across the control period.

We are concerned by the 23% fall in the freight benchmark which will have a detrimental effect on freight and a beneficial impact on NR.

We support the proposed reduction in the passenger payment rates but are concerned that the proposed 'partial' solution is counter to the available evidence and will have a further negative impact on freight. We believe the changes should be applied in full in line with the available evidence. Whilst we understand the desire to avoid significant swings in the regime, we do not understand why this is only being applied to passenger and we question whether a 23% or 40% swing as being applied to freight is also sufficiently significant that it should be moderated?

We understand the discussions over a reopener for the passenger elements of S8 part way through the control period. This creates very significant uncertainty for freight and we would be opposed to any reopener other than for very significant and extraordinary 'external shocks' such as happened with covid lockdowns. As any changes in the passenger regime will also affect freight rates it is unlikely that freight could be isolated from a reopener arising from passenger rail reform, and we believe that the bar must be set very high for consideration of a reopener mid period. As some customers are exposed to s8 through their haulage contracts the impact of this uncertainty is also wider that the freight operators, and would send a difficult message to the market, in addition to the significant increase in access charges.

In summary

- A holistic approach is needed to freight s8 to ensure that the overall regime is fair – there are significant risks associated with the current proposals
- We believe the passenger rates should be set based on the available evidence
- There must be a very high hurdle for any reopener to avoid significant uncertainty for freight operators.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

No comment

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of NR's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

No comment

Any other comments on managing change.

No comment

13. Are there any other comments you would like to make?

No comment

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

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Consent

In responding to this consultation, you consent to us:

- handling your personal data for the purposes of this consultation; and
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August 2023

Response to ORR's Draft Determination Consultation

1. INTRODUCTION

1.1. This document is the response from the Railway Industry Association (RIA) to the Office of Rail and Road's (ORR's) consultation on its Draft Determination for Network Rail 2024-2029.

2. BACKGROUND TO RIA

2.1. RIA is the trade association for UK-based suppliers to the UK and world-wide railways. It has over 350 companies in membership covering all aspects of rolling stock and infrastructure supply and a diverse range of products and services. As well as most of the Tier 1 contractors and large, multi-national companies, over 60% of RIA's membership base is comprised of small and medium-sized enterprises (SMEs).

2.2. RIA's supplier members represent the full range of UK rail disciplines, including working on renewals, enhancements, rolling stock, signalling, electrification, and retail.

2.3. RIA provides its members with extensive services, including:
- Representation of the supply industry's interests to Governments, regional and national transport bodies, rail clients – e.g., Network Rail, HS2, TfL – and other key stakeholders;
- Providing opportunities for dialogue and networking between members;
- Supply chain improvement initiatives;
- Supporting innovation through the Unlocking Innovation programme and UKRRIN (UK Rail Research and Innovation Network);
- Provision of technical, commercial and rail policy information every week; and
- Export promotion, including organising and creating Great branded UK Pavilions at key rail exhibitions overseas.

2.4. The rail network remains one of the UK's most valuable assets, with extraordinary potential to support green growth and wider social benefits for communities right across the UK. A 2021 report produced by Oxford Economics[1] shows that the rail industry supports:
- £43 billion GVA in economic growth;
- 710,000 jobs;
- £14 billion in tax revenue each year; and
- For every £1 spent in rail, £2.50 of income is generated in the wider economy.

2.5. RIA recognises that equality, diversity and inclusion drive innovation, financial performance, and success. Together with Women in Rail, RIA is promoting an 'Equality, Diversity & Inclusion Charter' for rail, which has the potential to support social mobility, grow UK STEM skills, create local opportunities, and increase the talent pool from which the future leadership of the rail sector will be drawn. The Charter reached 200 signatory organisations last November.

[1] https://www.riagb.org.uk/RIA/Newsroom/Publications%20Folder/OE_2021.aspx

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3. OVERVIEW AND SUMMARY

3.1. RIA welcomed the Control Period (CP7) announcements by the UK and Scottish Governments, in December 2022 and February 2023 respectively, to keep funding for Network Rail (NR) broadly stable in real terms. Certainty and stability of funding is hugely important for the supply chain.

3.2. Nevertheless, the plans developed by NR on the basis of this funding anticipate a decline in asset reliability in CP7, with rising costs in future control periods and pressure on sustaining train performance.

3.3. Since those plans were developed, inflation projections for the next five years have risen, placing further financial challenges on NR's funding settlement and making it even more challenging to sustain a high performing railway.

3.4. This makes it imperative to both manage costs – across the railway as an integrated system and over the lifespan of assets – and simultaneously grow revenues. A key test for the success of the CP7 settlement is whether it can provide the conditions and incentives to achieve these goals.

3.5. Rail reform is a UK Government policy commitment yet to be implemented, and so it is important the determination does not rely upon rail reform but provides the conditions for an integrated track-train approach to managing the railway. There remains uncertainty over when and how industry structures will be reformed. That is a matter for the UK Government, but we expect governments – now and in future – to commit to honouring the expenditure levels in the determination in full, even though there is structural change expected. Long-term certainty over funding is one of the most important ways governments can reassure the supply chain, help control industry costs and retain essential skills.

3.6. The ORR determination is a decision at a point in time, but the importance of continued active and transparent monitoring of risks and opportunities, over the life of CP7 is hard to understate. The ORR continues to play a crucial role here, which should be spelt out clearly in the final determination.

3.7. In this context our response to the draft determination emphasises:

- **Understanding risks:** There is a much higher need for transparency during CP7, reflecting the difficult trade-offs that will need to be made on an ongoing basis, and the long-term consequences of these decisions. This must cover transparency of:
  - Asset condition and risks;
  - Emerging risks e.g., financial, weather;
  - Any changes in funding; and
  - Prioritisation decisions taken during the course of CP7 – especially any decisions to allow asset condition to deteriorate.
- **Regaining long-term financial sustainability:** ORR has stated that the funding available does not allow a lowest whole-life cost solution and will require additional expenditure beyond CP7. We welcome a view from Governments on the realism of this funding assumption. There needs to be a credible long-term financial strategy for the railway. We support the ORR proposals to ensure sufficient contingency funds and to focus on core renewals, but we also need to see a clear plan to fund the strategic investments that will lower the whole-life and whole-system costs of running the railway over the longer term. Longer-term

contractual partnerships with suppliers can help facilitate this, as could the use of private finance.

- **Whole system 'Profit & Loss' and efficiency:** At an industry level there needs to be as much, if not more, focus on growing revenues, than just cutting costs in the short term. We want to see NR plans evolve to actively identify ways to grow industry revenues sustainably. NR should be challenged and empowered to dynamically update their plans to maximise long-term outcomes for the railway as a whole. Clearly the Department for Transport (DfT) will need to support such a shift in planning approach and enable this through its control of train operator contracts. ORR will also need to challenge NR to show how it is identifying and sharing best practice across different regions and business units.
- **Allocation and profile of spend:** The final determination should require a smooth profile of investment into CP7, over the five years, and then avoiding a drop-off in the final year. It should challenge NR to provide evidence of its preparedness to spend in year 1 of CP7, including the necessary design and development work. The final determination should consider the fit with other infrastructure investments, particularly highways, and the great importance of investment certainty for SMEs.
- **Supply chain engagement:** As the UK Government High Level Output Specification (HLOS) recognises, a resilient and productive rail supply chain that invests in skills and innovation will help reduce the overall cost of rail. We believe there is a case for clear expectations on NR to promote the sustainability of the supply chain. ORR should monitor and challenge NR to demonstrate continuously better supply chain engagement – from large companies through to SMEs. This is especially important given the need for flexible and agile planning to respond to shocks.
- **Planning process:** For reasons largely beyond their control, NR's Business Plans to the UK and Scottish Governments have been published very late in the planning cycle. We urge ORR to work with governments to consider how best to provide earlier transparency of plans in future, such as moving to transparent plans that are continuously updated and show asset investment profiles for different levels of NR funding.

The following sections provide more detail on these points. Above all, we stress the importance of ensuring that UK and Scottish Governments fund, and NR adheres to, the commitments in the plans, as this plays a crucial role in building confidence within the supply chain.

4. UNDERSTANDING RISKS

4.1. It is clear that CP7 will require a much more careful approach to assessing and understanding risks associated with asset condition. The draft determination states "We are satisfied that the constrained funding which requires NR to prioritise its expenditure does not need to result in undue concerns for the safety of assets or performance during CP7, if risks are fully assessed and managed".[2] It recognises that "the constrained funding available requires NR to conduct fewer renewals and more maintenance during CP7 in comparison to CP6" and puts the onus on NR "to provide evidence of how it will manage the change in risk profile which results from conducting fewer renewals".[3] We would expect to see such evidence in the update of NR's plans and the ORR final determination.

[2] Page 10, Para 3.4: supporting document
[3] PR23 draft determination: overview - England & Wales, Page 20, Para 5.3 and 5.4

4.2. Both ORR and NR recognise there will be a changing risk profile resulting from the spending decisions. In addition, the risk profile is likely to change as weather patterns change, with NR noting a 50% increase in adverse weather impacts over the past five years compared to the previous ten – a trend they expect to continue.[4]

4.3. We therefore expect transparency and more advanced risk monitoring from NR and ORR in their assessments of how asset resilience, reliability and safety risks will differ in future and how they will need to be managed differently. Where the consequences are not fully clear, we expect ongoing transparent assessment from NR and ORR.

4.4. NR has taken a 'market-led approach' to prioritising expenditure on lines with higher levels of usage. ORR has indicated that NR's 'market-led approach' to prioritising expenditure could be pursued to a greater extent in during CP7. Transparency of the consequences, particularly on under-utilised lines is essential, but there is no modelling of hypothetical plans. For example, lightly used lines are likely to already have older assets/ closer to renewal without which their capability will be reduced e.g., through speed restrictions. There is potentially a tipping point asset condition is under-invested in for too long where the line either needs substantial renewal or capability is dramatically reduced or even closed. ORR states "Network Rail has acknowledged that a further prioritisation during CP7 would require discussion with ORR and funders to implement"[5]. In our view, any such prioritisation must be a fully transparent assessment: further changes could fundamentally alter the risk profile in running the railway and the routes that are viable for rail services in future.[6]

4.5. Underpinning the understanding of risk is the need for excellent quality asset information, and we would expect the final determination to include a frank assessment by ORR of the current state of asset information, and requirements to address any weaknesses.

4.6. ORR's draft determination for England & Wales is based on NR's risk adjusted plan, with £2 billion of risk funding (£0.5 billion in a central fund and £1.5 billion held as contingent funds across NR's regions). ORR has stated it will increase scrutiny and transparency of NR's management of financial risks during CP7. We agree this approach is prudent, however, a crucial part of good financial management is to ensure that the full budgets are spent well, and this means transparency and scrutiny over future work planning as well as risks. If the full risk funds are not spent, this will only add to financial pressures in future control periods.

4.7. Overall, there is a much higher need for transparency during CP7, reflecting the difficult trade-offs that will need to be made on an ongoing basis, and the long-term consequences of these decisions. This must cover both transparency of asset condition and risks and over prioritisation decisions.

5. REGAINING LONG-TERM FINANCIAL SUSTAINABILITY

5.1. ORR has stated that the funding available "does not allow Network Rail to take a lowest whole life cost approach to managing railway infrastructure (e.g., where the lowest whole life cost solution has currently unaffordable up-front capex costs). Consequently, returning to lowest whole life cost approaches in future control periods will require additional expenditure beyond the CP7 level."[7]

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[4] England and Wales CP7 Strategic Business Plan, Page 5
[5] Page 14, Para 1.47: supporting document – sustainable and efficient costs: Part I
[6] Page 14, Para 1.47: supporting document – sustainable and efficient costs: Part I
[7] Page 10, Para 3.4: supporting document

5.2. It is welcome that NR are entering into more long-term relationships with suppliers, and we believe this could deliver significant efficiency benefits and should be more widespread. NR business plans, and the determination should identify further opportunities for long-term cost reduction from such changes, subject to government approval.

5.3. Alongside the recognition that whole life costs are rising we now need to see a plan to fund the strategic investments that will lower the whole-life, whole-system costs of running the railway over the longer term. For example, we note that:

- Over the next 15 years, 65% of current signalling units – a total of 26,000 signals - will become life expired, posing the risk of line closures if these units aren't replaced in time. RIA welcomes the long-term thinking in the intent of the Train Control Systems Framework and the support in the CP7 HLOS for the roll out of digital signalling. However, we note that the CP7 activity levels are modest compared to the backlog and are then expected to ramp up in CP8. In RIA's view, it is vital to the safety and capability of the railway that this commitment is sustained, and the pace is not allowed to slip.
- A rolling programme of electrification would not only reduce the costs of operating the intensively used parts of the network but would also be a major contributor to decarbonising UK rail. This could be delivered much more cost effectively than some past problem projects, as demonstrated in RIA's Electrification Cost Challenge report[8].

5.4. Whilst we understand that enhancements are outside the scope of the funding settlement and determination, a strategic approach to investments that will reduce long-term cost is missing from the plans and the draft determination. We would like to see the final determination set expectations for NR to develop clear proposals and options for investments that will reduce long-term cost.

5.5. To regain control over financial sustainability and optimise whole life costs we will need funding mechanisms that allow NR to optimise whole life cost across control periods. This requires support through:

- Long-term financial modelling, across control periods, which should be transparent, and overseen by ORR;
- Government policy commitments to rolling programmes of investment across control; periods; and
- Government policies that support the use of private finance to complement public funding, by creating a smother profile of earlier investment.

Whilst these are not specifically decisions for the ORR final determination, we would expect the ORR regulatory framework for CP7 to allow for and support such reforms.

6. WHOLE SYSTEM 'PROFIT & LOSS' AND EFFICIENCY

6.1. The UK Government proposals for rail reform set out the need for an integrated 'Profit and Loss' (P&L) approach to manage the railway. We fully support this, but question whether the NR plans, and determination could be more ambitious here, and start to support a change in decision making prior to structural reform.

[8] https://www.riagb.org.uk/ria/newsroom/stories/electrification_cost_challenge_report.aspx

6.2. NR's efficiency plans depend significantly on rail reform. ORR states: "Network Rail has emphasised that industry reform is a key enabler for delivering its CP7 efficiencies; not simply through structural and legislative changes to the industry, but through a more collaborative mindset which considers whole industry cost and makes smarter decisions with better information on their overall financial impact. Network Rail considers that industry reform enables 30% of the company's planned CP7 efficiencies." The final determination needs to provide greater clarity on the realistic timescale associated with achieving these efficiencies, given the latest developments on rail reform.[9]

6.3. ORR has proposed a £40m performance improvement fund to be used across track and train[10]. Whilst this is welcome, on its own it is not of a scale that can deliver the step change in track-train planning that is required. Instead, we believe that all aspects of the plans should be scrutinised (now, and on an ongoing basis) to test the extent to which they enable better whole-industry decisions. For example, is there potential to identify and support ambitious whole industry P&L pilots looking at particular parts of the network. Arguably ORR should be challenging NR to identify such possibilities and provide a view to governments on their potential.

6.4. The NR business plans do consider passenger and freight demand (as part of market led proposals), but from the perspective of responding to post-pandemic demand. We are concerned that the NR 'market led proposals' are of course not based on the latest passenger numbers, which have continued to grow since the time they were developed – they are dynamic and so NR's plans must also be responsive to what is an evolving situation. We do not see any evidence of this.[11]

6.5. We would go further still and assert that the CP7 plans should not simply respond to observed demand, but set ambitions to grow revenues in future, and provide a framework for taking decisions to support this. We welcome the aspiration to grow rail freight in CP7. We also welcome the ORR proposed decision that passenger train performance must not decline, which is crucial to retaining passenger trust. However, there is a clear need to target passenger - and associated revenue - growth. There should be expectations in the CP7 determination for NR to develop plans to support this in association with train operating companies.

6.6. To grow revenues and improve efficiency, NR should be incentivised to replicate good practices and processes across the rail network and avoid duplication and the inefficiency that comes with it. The Rail Investment Centre of Excellence is a good start in promoting learning from major projects and delivery. We now need a final determination that creates strong institutional incentives for NR to replicate good practice and innovation across different regions and business units.

6.7. The experience of our member companies is that focusing on short term cost control tends to lead to boom and bust investment approaches which are more costly in the long run[12]. RIA and the supply chain wholeheartedly support the need to have clear plans for cost reduction - and see the delivery of NR efficiency plans in CP6 as a clear model for this, where targets had clear ownership and were seen as deliverable at a whole rail system level. As recognised in

[9] Page 19, Para 1.63: supporting document – sustainable and efficient costs: Part I
[10] PR23 draft determination: overview - England & Wales, Page 13, Para 3.1.
[11] Page 69, Para 9.15: supporting document – outcomes
[12] https://www.riagb.org.uk/RIA/Newsroom/Publications%20Folder/GBR_legislation_consultation.aspx?WebsiteKey=dc1927f5-fa2e-4539-97fe-f032f006424d

Construction and Outsourcing Playbooks, a cost-only approach leads to transactional relationships and creates the risk of a race to the bottom with company and contract failure. In the context of global uncertainty and with current high inflation the risks to supply chain sustainability are potentially higher than ever. We recommend a collaborative approach to optimising long-term social, economic, and environmental benefits with a focus on growing revenue, as well as reducing costs by building on programmes such as NR's Project SPEED.

6.8. As we move towards a more whole system approach, the role of the NR System Operator will be crucial in this transition supporting better timetable optimisation and train planning. We would like to see clarity in the final determination over the expectations for the system operation capabilities that will be needed to support integrated management of revenues and costs.

6.9. In summary, at an industry level, it is very clear that there needs to be as much – if not more – focus on growing revenues, than cutting costs. Currently, NR has little incentive to grow revenues. The CP7 plans have to enable a radical change in mindset and must not focus NR simply on narrow short-term cost reduction. The ORR final determination needs to demonstrate that this is the case.

7. ALLOCATION AND PROFILE OF SPEND

7.1. With constrained financial resources, it is vital that there is an efficient allocation and profile of spend across the funding period.

7.2. Managing the profile of spend over the control period, and closely monitoring NR's preparedness to deliver, is crucial to the health of the supply chain: businesses that have very uneven work profiles experience higher costs and cannot sustain a skilled workforce. The next section considers supply chain engagement further. The ideal scenario is a steady rate of expenditure through the supply chain over the five years, and in the transitions between control periods.

7.3. We note that the profile of spend over the five-year period is not even. The ORR assessment shows that there is a significant drop of about £400-500m in the profile of renewals spend in the last year of the control period, particularly when removing the effect of 'Project Reach' which is a separate item of expenditure unrelated to normal infrastructure supplier activity volumes[13].

7.4. Understanding spending profiles in other related sectors, particularly highways, which share supply companies is important. It would be useful to know how NR and National Highways can work better together to gain efficiencies and avoid conflicting sequencing of work. It would be interesting to understand if ORR have modelled the rail determination alongside the highways determination to understand the impact on the market as a whole.

7.5. RIA would like the final determination to:

- Require a smoother profile of investment over the five years, and avoiding a drop off in the final year.
- Challenge NR to provide evidence of its preparedness to spend in year 1 of CP7, including completing all expenditure in CP6 as planned. There was an established leading indicator of readiness for spending, particularly testing whether design / development work has

[13] PR23 draft determination: overview - England & Wales, Page 49, (Table C.1)

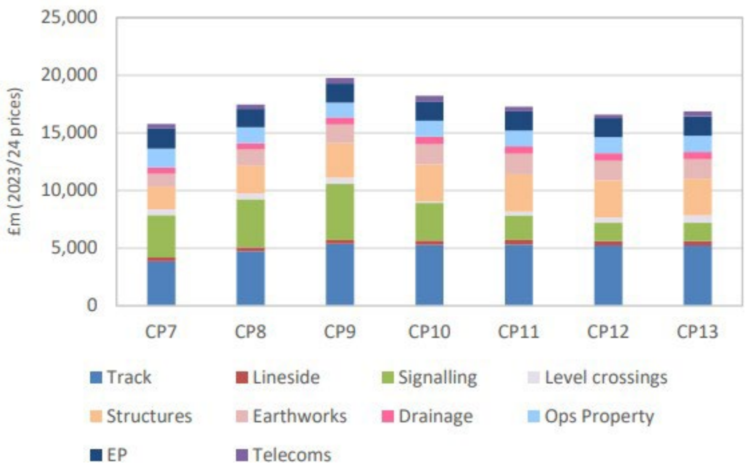
taken place. ORR should be challenging NR to provide this analysis including specific assurances for each of the regions and national functions.

- Provide review and challenge of how well coordinated rail investment plans are with other infrastructure providers – in particular National Highways – to plan and model its spend on similar assets to optimise the profile of work.

7.6. ORR has proposed that "approximately £0.55 billion more expenditure on core renewals is required in England & Wales to mitigate potential risks associated with core assets during CP7. This would aim to mitigate potential risks to asset performance now and in future control periods".[14] We support ORR proposal to boost core renewals, given the importance of optimising long-term asset condition.

7.7. NR's plan assumes for phased increase in renewals in CP8 and CP9 to recover asset condition:

Figure 10.3: CP7 renewals plan and longer term expenditure



7.8. Have ORR or NR made any assessment of whether such funding levels in CP8 and CP9 are realistic, as insufficient funding could lead to further decline in asset reliability and performance? The 15 years from CP7 to CP9 is a significant proportion of the lifecycle of many asset types and, if this recovery in activity in CP8 does not happen, there is a very serious risk to network capability.

8. SUPPLY CHAIN ENGAGEMENT

8.1. The DfT HLOS for CP7 sets clear expectations on NR to engage effectively with the supply chain, stating that "The Secretary of State therefore expects clear evidence of Network Rail working collaboratively with its supply chain and to exercise its role as an effective and engaged client, demonstrating a commitment to being 'open for business'."[15] It rightly recognises that "A resilient and productive rail supply chain that invests in skills and innovation will help reduce the overall cost of rail".

8.2. It is welcome that NR's plans recognise the importance of engaging with suppliers more explicitly than in the past. Their overall plan makes a statement of commitment to provide visibility of pipeline work and maximising opportunities for efficiency[16]. By moving to

[14] PR23 draft determination: overview - England & Wales, Page 17, para 4.6
[15] High Level Output Specification (HLOS)
[16] England and Wales CP7 Strategic Business Plan, Page 73

outcome-based requirements rather than specifying what and how to deliver requirements, NR says it will encourage the supply chain to bring forward new and improved ways of working. This is welcome.

8.3. Much of NR's work is procured through quite complex frameworks and ORR will need to ensure these continue to encourage growth and innovation, including supporting SMEs, new entrants, and innovation from existing companies. To encourage innovation, we now want to see plans from regions (and national functions) providing greater clarity on the specific challenges NR wants support from the supply chain in addressing. These are shared problems, and industry need to be partners – with NR and governments – in solving.

8.4. SMEs help to drive innovation and efficiency. Early supplier engagement, as laid out in the Construction Playbook, should be a priority for NR and their framework partners in order to give potential suppliers the best opportunity to respond to tenders and unlock these innovations and efficiencies [17]. However, SMEs are also extremely vulnerable to boom-and-bust investment and uncertain workbanks. Cash flow is critical, especially to start-up companies – hence a strong pipeline of confirmed work is essential, with the confidence that the work will go ahead. Without this confidence we risk losing SMEs from the sector, along with their agility and specialist knowledge.

8.5. To secure greater efficiencies within the industry, we will need to go well beyond simply improving procurement practices and routine supply chain management. We believe that there is a case for a duty on NR, and other major clients, to promote the sustainability of the supply chain, because this is so important to the future efficiency and performance of the industry. We would expect ORR to monitor and challenge NR to demonstrate continuously better supply chain engagement, including identifying the efficiency implications of different contracting models, which ORR has recognised are bespoke in each region. This is particularly important for long-term contracts which must provide welcome certainty for successful suppliers but must keep supporting innovation.

8.6. It is likely that there will be greater need for flexibility and adaptability during CP7 to respond to emerging risks and opportunities e.g., financial, weather-related, passenger demand trends and the latest data on asset condition. However, this needs to be carefully balanced with a *commensurate* increase in early visibility and engagement for the end-to-end supply chain so that there are not sudden unexpected changes to contracts, and suppliers are as prepared as possible for any changes.

8.7. Finally, we want to comment on the process around publishing and consulting on the Strategic Business Plans. The plans provide important details about NR's spending proposals over the next five-year period, which can help businesses plan ahead and deliver work as efficiently as possible. However, the plans have been published significantly later than usual in the five-year funding cycle, reflecting an unstable political period and resulting delays by Governments in publishing Statements of Funds Available (SoFA) and HLOS.

8.8. Delays in publishing business plans can undermine the ability of companies to prepare fully. We urge ORR to work with Governments to consider how best to provide earlier transparency of plans. One possible solution could be for ORR to require greater transparency of the core elements of NR plans, such as showing asset expenditure proposals against different funding scenarios (i.e., agnostic to the actual funding decision). If such plans were produced,

[17] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1102386/14.116_CO_Construction_Playbook_Web.pdf

transparent and continuously updated and improved on a rolling basis, the whole industry would be significantly better able to plan to deliver the work required.

[Redacted]

National Union of Rail, Maritime and Transport Workers

(RMT Union)

Office of Rail and Road

PR23 Draft Determination consultation

August 2023

RMT Union is Britain's largest specialist transport union and has more than 80,000 members from almost every sector of the transport industry. RMT is by some distance the largest rail union and represents all grades of rail workers. RMT welcomes and thanks Office for Rail and Road for the opportunity to submit this response to their PR23 Draft Determination consultation.

Executive Summary

RMT has serious concerns with Network Rail's Strategic Business Plan for Control Period 7 (CP7) and ORR's subsequent draft determination of these plans. For a railway that is emerging from the impacts of the Covid-19 pandemic, we believe the current and future cost-cutting at Network Rail poses increased risks to health and safety, and to asset and train performance which will have a negative effect on both passengers and railway workers.

It is important for RMT to note that ORR highlight that "PR23 has been conducted within a wider context of fiscal constraints and high inflation" but RMT does not agree with the narrative of "fiscal constraints" as funding cuts, efficiencies and "constraints" on our railways are a political choice not an economic necessity. It is therefore frustrating that ORR is not being more robust in challenging this narrative but are instead agreeing that "the constrained funding for CP7 will require some challenging decisions on priorities and an increased need for efficiencies" at a time when for the critical forthcoming five-year control period we need to see unprecedented investment in our railway to simultaneously grow passenger numbers and our economy whilst also leading the fight against catastrophic climate change.

RMT is also concerned that ORR outlined that both the "*UK and Scottish Government's HLOS and SoFA were finalised later than anticipated. Consequently, Network Rail's plans for CP7 have been produced to challenging timescales and continue to evolve. At this point in the process, we are issuing our draft determination based on the information as it currently stands so that we can obtain stakeholder views."*[1] Whilst RMT recognises the need for certain flexibility in plans we are concerned that due to late submission of plans that we do not have all the information we need to make a properly informed response and our concerns about that must be noted and ORR needs to set out how it will address this.

RMT believes that neither Network Rail's strategic business plan for CP7 nor the ORR's draft determination seems to adequately recognise the combined crises of climate change, extreme weather conditions, record high inflation and ageing infrastructure and assets facing our railway. We believe that this represents a government policy of managed decline on our railway and this submission will list all of the key areas that RMT Union is most concerned about within the draft determination under these key headlines:

- **Finance -** RMT believes the Statement of Funds Available for CP7 (£44.8bn for April 2024-March 2029 - £40.0 billion for England and Wales, £4.8 billion for Scotland) from April 2024 to March 2029) does not provide the investment needed

[1] PR23 Draft Determination Executive Summary - https://www.orr.gov.uk/sites/default/files/2023-06/01-pr23-draft-determination-executive-summary-england-and-wales_0.pdf

to ensure the safety, resilience, and reliability of our railway at a time when we are seeing the combined impacts of crises such as climate change, extreme weather conditions, record high inflation and ageing infrastructure and assets.

RMT is deeply concerned by ORR's insistence on Network Rail in England and Wales making £3.2 billion[2] of efficiency savings and £429 million in Scotland at a time when funding for core and asset renewals is being cut. RMT believes this will be a false economy, building up future issues that will ultimately compromise the safety and performance of our railway.

- **Health and Safety -** Network Rail's Strategic Business Plan for CP7 has proposed to significantly reduce asset and core renewals over the course of the next five-year period which RMT believes will not only threaten services and safety on our railways but also thousands of skilled railway jobs across Network Rail and the wider supply chain.

- **Asset and Train Performance -** RMT believes the risks associated with declining asset reliability will have a highly negative effect on overall train performance over CP7 which negatively impact both passengers and freight performance during the next control period.

- **Scotland –** RMT is concerned that Network Rail Scotland's Strategic Business Plan (SBP) for CP7 was not published until late July 2023 which is more than a month after the consultation on ORR's draft determination of this plan was launched. This back to front approach to publishing key strategic documents does unfortunately undermine this consultation process. As a comparison the Network Rail Scotland SBP for CP6 was published in April 2018.

  Like Network Rail in England and Wales, Network Rail Scotland proposes to conduct fewer renewals during CP7 in comparison to CP6.[3] Network Rail Scotland proposes to manage the risks posed by the reduction in renewals to safety, performance, and asset sustainability by increasing its maintenance activities and using operational controls. It anticipates an increase in service affecting failures of assets towards the end of CP7 and a decline in overall asset sustainability. RMT believes this approach, like that in England and Wales, is short sighted and ultimately a false economy that will likely cost the railway more in long-term.

Consultation Response

Finance

Whilst the Statement of Funds Available for CP7 (£44.8bn for April 2024-March 2029 - £40.0 billion for England and Wales, £4.8 billion for Scotland) from April 2024 to March

[2] PR23 Draft Determination Overview P.23 https://www.orr.gov.uk/sites/default/files/2023-06/01-pr23-draft-determination-executive-summary-england-and-wales_0.pdf

[3] ORR PR23 Draft Determination Executive Summary Scotland https://www.orr.gov.uk/sites/default/files/2023-06/02-pr23-draft-determination-executive-summary-scotland.pdf

2029) represents a real terms increase in spending in 2023 prices, RMT believes it does not provide the investment needed to ensure the safety, resilience, and reliability of our railway at a time when we are seeing the combined impacts of crises such as climate change, record high inflation and ageing infrastructure and assets.

ORR highlight how Network Rail is proposing to cut funding for core renewals which means that, in comparison to CP6, Network Rail proposes to undertake fewer renewals of core assets during CP7[4]. Network Rail proposes to spend approximately £17.8 billion on asset renewals during CP7. This is approximately 3% less than in CP6. Expenditure on core renewals is planned to be £14.7 billion, which is 11% less than in CP6. Core renewals cover track, off-track, signalling, level crossings, earthworks, drainage, buildings, electrification and fixed plant, and telecoms. To cut spending on these vital pieces of railway infrastructure for the next five-year control period to make a short-term saving is short sighted and adds significant and unnecessary risks to both passengers and railway workers on our railway. RMT is concerned that ORR barely references the devastating impacts cuts to renewals will have on to the wider railway supply chain.

The importance of the railway supply chain to the UK economy and workforce cannot be overstated. A recent report by the Rail Industry Association[5] found the rail industry supported: £43 billion GVA in economic growth, compared to £36.4 billion in 2016; 710,000 jobs, compared to 600,000 in 2016; £14 billion in tax revenue each year, compared to £11 billion in 2016; and for every £1 spent in rail, £2.50 of income was generated in the wider economy, compared to £2.20 in 2016. RMT believes that cutting funding for key areas like renewals is a false economy that will have devastating medium to long terms effects.

Network Rail proposes to manage the risks posed by the reduction in renewals by increasing its maintenance activities which includes spending £10.1 billion in CP7 which whilst this represents a 7% increase compared to CP6 spending does not recognise the huge changes to maintenance regimes through the imposition and reliance on the Modernising Maintenance Programme which is still largely untested across the GB network.

RMT is also deeply concerned by ORR's insistence on Network Rail in England and Wales making £3.2 billion[6] of efficiency savings and £429 million in Scotland at a time when funding for core and asset renewals is being cut. RMT believes the drive for efficiencies is a false economy as the failure to invest now in our railway will have a devastating effect on our railway in the longer term.

Maintenance and Renewals expenditure

RMT is concerned that total renewals expenditure is down £1.5 billion (-4%) versus CP6 across the GB network but the reduction is not evenly distributed between regions and

[4] ORR PR23 draft determination: Overview – England & Wales P.15 https://www.orr.gov.uk/sites/default/files/2023-08/03-pr23-draft-determination-overview-england-and-wales_0.pdf

[5] The Economic Contribution of UK Rail – RIA https://www.riagb.org.uk/RIA/Newsroom/Publications%20Folder/OE_2021.aspx

[6] PR23 Draft Determination Overview P.23 https://www.orr.gov.uk/sites/default/files/2023-06/01-pr23-draft-determination-executive-summary-england-and-wales_0.pdf

National Functions.[7] Regions in England & Wales plan to spend on average £1.2 billion (-8%) less on renewals in CP7; Network Rail Scotland plans to spend £0.33 billion (-14%) less.

Looking at the Network Rail Regions, only Northwest and Central Region (NW&C) is planning to increase spending on renewals in CP7 with a 15% increase overall whereas Eastern (-15%), Southern (-17%) and Wales and Western (-10%) are all making significant cuts in spending compared to CP6. Scotland is also making cuts to renewals of (-14%) in CP7 compared to CP6.

When looking at actual proposed spending on renewals RMT believe that it is a very concerning picture across national functions, for example Network Rail propose to cut -28% on track renewals compared to CP6, a -7% cut in spending on signalling compared to CP6, an -11% cut in structures compared to CP6 and most concerning a -16% cut in earthworks renewals compared to CP6.

ORR is right to highlight Network Rail's proposed increase in spending of 22% on drainage compared to CP6 and that drainage expenditure is planned to increase in CP7 in all regions, except for NW&C.

ORR is right to highlight Network Rail's proposals on earthworks will actually lead to a reduction in volumes of earthworks specific drainage, despite drainage expenditure increasing in all regions except NW&C. ORR are also right to note Network Rail's proposal not to pursue dedicated drainage teams in most regions, which is not consistent with one of the recommendations made in the action plans developed following the Mair/Slingo inquiries on managing rail infrastructure in more frequent extreme weather following the Carmont rail disaster in 2023.

Modernising Maintenance

Network Rail's overall maintenance expenditure has increased by £706 million (6.7%) which Network Rail state is to compensate for the reduction in spending on core and asset renewals but this approach is also dependent on Network Rail's Modernising Maintenance programme which ORR recognise is a "critical enabler of increased maintenance effectiveness in CP7"[8]. However, this programme is currently being implemented is largely untested. With no final timeframe for full implementation ORR state that "it will take some time for the new ways of working to become fully embedded." RMT is deeply concerned that Network Rail's approach to maintenance in CP7 is intrinsically linked to the Modernising Maintenance Programme which is unlikely to be fully implemented when the CP7 period begins in April 2024.

RMT is deeply concerned that a significant amount of risk is being placed upon Network Rail's maintenance functions at the same time as they are essentially imposing a new Modernising Maintenance agenda that does not have full agreement or buy-in from

[7] PR23 draft determination: Supporting document – sustainable and efficient costs: Part I
https://www.orr.gov.uk/sites/default/files/2023-08/15-pr23-draft-determination-supporting-document-costs.pdf

[8] PR23 draft determination: Supporting document – sustainable and efficient costs: Part I
https://www.orr.gov.uk/sites/default/files/2023-08/15-pr23-draft-determination-supporting-document-costs.pdf

maintenance workers and will ultimately lead to job losses and a significant reduction in headcount. RMT understands that Network Rail still intend to remove 1,950 front-line maintenance posts at a time when they are signing multi-billion-pound framework agreements with sub-contractors to outsource work that in-house staff could carry out. Network Rail is also pursuing a policy of cutting Maintenance Scheduled Tasks by 50%. RMT believes it is highly reckless for Network Rail to be cutting renewals and then expecting the maintenance functions to mitigate the health and safety risks of this whilst simultaneously imposing their Modernising Maintenance programme. At the end of this document, we provide a commentary on our safety concerns arising from the implementation of Modernising Maintenance.

Market Led Approach

Network Rail intends to take a market-led approach to renewals[9] which would involve prioritising expenditure on high value routes, which will likely result in limited renewals and refurbishment work on lower value lines, leading to increased reliance on maintenance work and operational controls, such as speed restrictions, to manage and mitigate risk. RMT Union shares ORR's concern that within each of its regions in England & Wales, Network Rail has sought to prioritise expenditure on renewals with a "market led approach" in a manner which is consistent with the requirements of the UK Government's plan in its High-Level Output Specification (HLOS) to support revenue generation by prioritising expenditure on high revenue generating rail routes.

This market led approach will ultimately accelerate the managed decline of less revenue generating railway routes which will ultimately lead to a knock-on effect of more service affecting failures. Network Rail has advised ORR that it could pursue this market-led approach to a greater extent during CP7 but it did not provide specific proposals in its SBP. Network Rail has acknowledged that a further prioritisation during CP7 would require discussion with ORR and funders to implement. RMT could not oppose this approach more strongly. A market-led approach to infrastructure and maintenance of our railway echoes the disastrous commercialisation and marketisation approach that Railtrack took to the maintenance and infrastructure of our railway which ultimately severely compromised health and safety.

Network Rail Headcount and Efficiencies

In Network Rail's SBP they proudly highlight how "over the last 18 months we have reduced our headcount by 3,500 to a current level of 39,500 employees"[10]. ORR highlight how the following Network Rail teams have reduced their headcount in CP6 including Commercial & Procurement team in Route Services down -24% since 2018, IT and digital services down -17% since 2018, System Operator down -8% since 2018, Corporate Services down -24% since 2018. RMT opposes these job cuts in the pursuit of efficiency savings and will of course continue to fight any attacks on our member's jobs, pay and conditions as robustly as possible.

[9] PR23 draft determination: Supporting document – sustainable and efficient costs: Part I https://www.orr.gov.uk/sites/default/files/2023-08/15-pr23-draft-determination-supporting-document-costs.pdf

[10] England and Wales Strategic Business Plan Control Period 7 - P.7 - https://www.networkrail.co.uk/wp-content/uploads/2023/05/England-and-Wales-CP7-Strategic-Business-Plan.pdf

Efficiencies in CP6 and CP7 and Network Rail debt

Network Rail also report how they have delivered "strong efficiencies" and are on track to deliver a further £500m of savings on top of the original £3.5 billion gross efficiencies over the remainder of CP6. Network Rail highlight how these efficiencies have largely been achieved through improving their approach to working with the supply chain; reforming their approach to taking access of the network to deliver maintenance and renewals work and modernising their management and maintenance activities.

Network Rail's SBP suggests that it can deliver £3.7 billion of efficiencies across Great Britain, comprising £3.2 billion from its activities in England & Wales under the risk-adjusted plan, and £0.4 billion from its activities in Scotland and ORR accept this assessment. RMT is however deeply concerned that ORR does not reference the increasing levels of Network Rail debt and the need to address this debt burden as a priority before considering making efficiency savings. According to Network Rail's latest Annual Report for 2022/23[11] Network Rail net debt increased to £59.1 billion from £56.1 billion due to increases in the valuation of RPI-linked bonds.

In 2022 RMT published a report[12] focussing on Network Rail's debt burden which highlighted how in almost every year since 2010, Network Rail has spent more servicing its debt than it has spent on infrastructure maintenance and as a percentage of its spending on renewals, enhancements, maintenance and finance, Network Rail is spending less than Railtrack did just before it was taken into administration. ORR as the financial regulator of our railways should be leading the calls for the reduction in Network Rail's crippling debt burden before any further cuts or efficiencies are levied against Network Rail. This could be done by the Government essentially writing off the debt and repaying the debt by charging Network Rail's outstanding debt against public expenditure, repaying the private bondholders directly, financing this, if necessary, with its own borrowing, which has always been far cheaper than for bodies like Network Rail, when it was permitted to borrow.

Inflation

In its England and Wales SBP, Network Rail has projected just under £1.7 billion of inflation costs in CP7. This includes £0.3 billion of general inflation and £1.3 billion of input price inflation. The Scotland plan includes £0.09 billion of general inflation and £0.16 billion of input price inflation. The highly volatile nature of inflation currently means RMT cannot comment on the accuracy of these projections but as much of these inflationary costs are linked to the high level of debt Network Rail has, RMT would encourage ORR to join our calls for Network Rail's debts to be written off by the UK Government to emancipate the organisation from this financial burden particularly at a time of such historically high inflation.

[11] Network Rail Annual Report and Accounts 2023 - https://www.networkrail.co.uk/wp-content/uploads/2023/07/Network-Rail-Annual-Report-and-Accounts-2023.pdf

[12] Railtrack revived? How private profiteers are driving Network Rail's cuts to maintenance spending – and risking passenger safety https://www.rmt.org.uk/news/publications/railtrack-revived/rmt-policy-briefing-railtrack-revived-network-rail-s-cuts-to-maintenance-spending.pdf

Health and Safety

ORR's benchmarking of safety performance in the Common Safety Indicators Report shows that the GB network is still one of the safest railways in Europe[13]. RMT will always speak out to defend railway safety which makes Network Rail's SBP and ORR's Draft Determination for CP7 even more concerning as there are key areas that RMT believes directly threaten these health and safety gains that have been made and we list these below.

Asset renewals including earthworks

ORR is right to highlight that safety outcomes in CP7 will "in significant part" be shaped by core asset condition whilst Network Rail is proposing to undertake fewer renewals of core assets during CP7. In England & Wales regions, Network Rail proposes to spend £14.8 billion on all renewals in the risk-adjusted plan, which is £0.6 billion (-3%) less than CP6. In Scotland total renewals spend is £2.1 billion, which is down £0.3 billion (-14%) on CP6. ORR highlight that due to the overall reduction in renewals, all Network Rail regions are projecting an increase in "service affecting failures" and have highlighted a likely increased use of operational speed restrictions to manage the infrastructure safely. RMT does not accept that this is a sustainable and ultimately safe way to run a railway for the next five-year period.

RMT is deeply concerned that Network Rail propose a significant reduction in the planned levels of earthworks renewals nationally. Network Rail's proposed spend on earthworks would reduce in CP7 by £245 million (-16%) this is despite the recommendations in the RAIB Report following the Carmont disaster. ORR is therefore right to highlight concern in this proposal considering the potential for earthworks failure which could give rise to a catastrophic incident, alongside the changing climate and resultant increased risk of such failures. Network Rail has apparently acknowledged the reduction in earthworks spend and argues that this is to some extent compensated for by increased expenditure on drainage. However, drainage renewal funding is not all targeted at drainage supporting earthworks as much of it is targeted at track drainage.

RMT shares the ORR's concern that Network Rail, as part of its cost-cutting on asset renewals, is proposing to reduce the volumes of earthworks specific drainage it intends to deliver in CP7 and not use dedicated drainage teams. Considering the implications of this reduction in spend on earthworks combined with the increased occurrence of extreme weather events and the very recent Carmont rail disaster, this is a reckless proposal by Network Rail and is also completely inconsistent with one of the recommendations made by Lord Mair[14] following the Carmont derailment and RMT would expect to see this updated in the ORR final determination and RMT is disappointed there is not much more pressure from ORR being applied to this in the draft determination.

Asset management

[13] Common Safety Indicators https://dataportal.orr.gov.uk/media/2184/common-safety-indicators-2021.pdf

[14] RAIB Rail Accident Report p.133
https://assets.publishing.service.gov.uk/media/62274fe0e90e0747a49c94ca/R022022_220310_Carmont.pdf

In Network Rail's SBP they highlight how Network Rail's own Technical Authority conducted assurance reports and ongoing reporting on asset management and renewals. Network Rail's Technical Authority's assurance found areas of concern in the planned level of renewals in the following areas:

- Track in Wales & Western;
- Earthworks in Eastern, Southern and Wales & Western
- Tunnels in Wales & Western; and
- Structures in Scotland, Southern and Wales & Western

These areas of concern make the proposal by Network Rail to reduce renewals across the GB network and instead place huge reliance on operational controls such as speed restrictions and go slows for the duration of CP7 even more concerning.

We agree with ORR's assessment that even if operational restrictions are implemented perfectly, there would likely be resistance to their widespread or long-term implementation from passengers and railway workers alike. It is also important to note that operational restrictions transfer elements of risk control from Network Rail to train operators and would pose increased risks in our highly fragmented, privatised railway network.

RMT believes the proposal for Network Rail to cut funding for both asset and core renewals work and instead increase maintenance and use operational controls such as speed restrictions is a dangerous and reckless way to run a railway for the next five-year period. This will ultimately pile more pressure on our railway and increase the risks to both passengers and railway workers.

Maintenance

With a lower level of renewals in CP7, there will be an overall increase in demand on Network Rail's maintenance function. RMT is concerned that there is a reliance on the implementation of Network Rail's Modernising Maintenance programme which is largely untested in many areas of the GB network.

RMT also shares ORR's concerns about these reductions in funding for renewals and increased reliance on maintenance but we do not share ORR's confidence that these funding cuts do not ultimately pose a significantly increased risk to health and safety.

In ORR's Assessment of the Delivery on the UK Government's HLOS requirements ORR state: *In the constrained funding environment, Network Rail proposes to reduce renewals and increase maintenance. Network Rail proposes to manage the risks posed by the reduction in renewals by increasing its maintenance activities and using operational controls, for example speed restrictions. However, our assessment (supported by the findings of Network Rail's own Technical Authority) identified insufficient mitigations to manage the increase in risk posed from a limited set of core assets. Our draft determination proposes Network Rail should reallocate £0.55 billion of expenditure to core renewals. We consider that this should address the main vulnerabilities. For our final determination we expect Network Rail to demonstrate how it will manage risk so far as is reasonably practical, including by considering our recommendation on renewals."*

RMT believes that the ORR proposal to reallocate £0.55 billion[15] of expenditure to critical core renewals does not go far enough and would not fully address the proposed shortfalls following the reduction in spending compared to CP6 and the increased risk posed by degrading structures and assets and that of extreme weather events.

RMT would expect ORR to propose Network Rail at least match or increase CP6 funding for core and asset renewals which would require an extra £1.8 billion across all regions in England and Wales and Network Rail Scotland.

Operational controls and importation of risk

RMT is deeply concerned about Network Rail's proposals to use operational controls to mitigate the risks from cutting renewals work. As the ORR note, *"Network Rail proposes to manage the risks posed by the reduction in renewals by increasing its maintenance activities and using operational controls, for example speed restrictions."*

Degrading the service through measures like speed restrictions carries serious risks for staff and passengers, increasing the burdens on drivers and the dangers of SPAD incidents, threats to maintenance teams and the risk of derailments.

Performance

RMT believes the risks associated with declining asset reliability will have a highly negative effect on overall train performance over CP7 and whilst Network Rail admit that "it is almost impossible to forecast whole industry train performance accurately over the short term"[16] it is concerning that there are proposals within Network Rail's strategic business plan that will make asset performance and ultimately whole industry train performance worse including the reduction in renewals causing an increase in Service Affecting Failures of 2% over the course of CP7. The proposed increased use of operational controls such as speed restrictions will also only serve to make whole industry train performance worse.

In Network Rail's SBP they highlight how by focusing its reduced renewals funding as part of their 'Market-Led approach could result in an overall fall in asset reliability during CP7. This would likely then create an increase in Service Affecting Failures and a 'small' deterioration in train performance. ORR is right to push back on Network Rail's proposal in the draft determination stating "We expect no further decline in train performance, and for Network Rail to deliver ambitious but deliverable improvements for passengers and freight customers'[17]"

Freight Growth and Track Electrification

[15] PR23 Draft Determination Overview P.17 https://www.orr.gov.uk/sites/default/files/2023-08/03-pr23-draft-determination-overview-england-and-wales_0.pdf

[16] P.9 Network Rail Strategic Business Plan England and Wales https://www.networkrail.co.uk/wp-content/uploads/2023/05/England-and-Wales-CP7-Strategic-Business-Plan.pdf

[17] PR23 draft determination: Overview – England & Wales P.10 https://www.orr.gov.uk/sites/default/files/2023-08/03-pr23-draft-determination-overview-england-and-wales_0.pdf

Network Rail's SBP outlined a forecast to grow freight between 2.9-8.6% across its regions during CP7 however this forecast is not backed up by an ambitious rail freight growth target by either the UK or Scottish Governments which we are still waiting for. This uncertainty is bad for the railway and bad for the UK and Scottish Government's legally binding targets to decarbonise our transport network. In Scotland the Scottish Ministers' HLOS also expects Network Rail Scotland to facilitate freight growth of 8.7% during CP7.

RMT is also concerned that there are no targets or indeed any proposals for track electrification over the next five-year control period. Electric traction is the only way to run the longer, heavier freight trains that are essential for rail freight growth as electric locomotives have typically twice the power of a diesel locomotive (electric class 92 – 5MW, diesel class 66 – 2.2 MW). Currently, only 10% of British freight trains are electrically hauled and it is disappointing that the ORR Draft Determination does not highlight this further. To create the modal shift needed to decarbonise our transport network Network Rail must find a way to dramatically accelerate track electrification. ORR statistics show that in the latest year (April 2021 to March 2022) just 2.2 track km were electrified and added to the network. The proportion of electrified route remained similar compared with the previous year at 38.1%. RMT research highlights how based on Network Rail's Traction Decarbonisation Network Strategy[18] 13,000km of railway line needs to be electrified by 2050. Between 2023 and 2050, that means that 464km will need to be electrified each year but in the last year Network Rail has electrified just 2.2 track kms which is simply not good enough and ORR's failure to set more ambitious targets for Network Rail is very disappointing.

Passenger Growth

Network Rail's Strategic Business plan for Control Period 7 outlines how they assume that passenger numbers will continue to increase in CP7 but that service levels will remain broadly flat at 88% of pre-Covid 19 levels. RMT believes both Network Rail and ORR lack serious ambition for significant and sustained growth of our railways at a time when the UK is legally required to cut carbon emissions and we need to maximise mode shift from road to rail.

Scotland

RMT has found it more difficult to comment on the Draft Determination for Scotland as Network Rail Scotland's Strategic Business Plan (SBP) for CP7 was not published until late July 2023 which is more than a month after the consultation on ORR's draft determination of this plan was launched. This back to front approach to publishing key strategic documents does unfortunately undermine this consultation process. As a comparison the Network Rail Scotland SBP for CP6 was published in April 2018. RMT is unsure why this delay has occurred and it should have been incumbent on the ORR to make this clear and front and centre of this consultation process.

Finance

[18] TRACTION DECARBONISATION NETWORK STRATEGY https://www.networkrail.co.uk/wp-content/uploads/2020/09/Traction-Decarbonisation-Network-Strategy-Interim-Programme-Business-Case.pdf

Network Rail Scotland's total expenditure in CP7 is forecast to be £4.8 billion, which compares to £4.6 billion during CP6. RMT is concerned that ORR once again talk about "The constrained funding environment" for Scotland as they did for England and Wales. RMT believes that the same policy of managed decline of our railway is also being levied in Scotland and as a result key areas are underfunded. In comparison to CP6, Network Rail Scotland proposes to undertake fewer renewals of assets during CP7. In its interim plan it proposes to spend approximately £2.1 billion on asset renewals. This is approximately -14% less than in CP6. This underfunding of renewals in Scotland is of particular concern to RMT union after the Carmont rail disaster in 2020 whilst the RMT notes an increase in funding for Maintenance of 8% over CP7 there is no details on whether this will mean an increase in headcount for Network Rail Scotland's maintenance function.

ORR suggests that Network Rail Scotland should spend an extra £50 million[19] for core renewals, £101 million for risk provision and £100 million for the Targeted Train Performance fund but RMT is still concerned that this extra funding will still not be sufficient to mitigate the risks posed by a 14% reduction in spending on asset renewals.

Health and Safety

ORR states that they are satisfied that the constrained funding does not need to result in undue concerns for the safety of assets or performance during CP7, if risks are fully assessed and managed and that Network Rail Scotland proposes to manage these risks posed by the reduction in renewals by increasing its maintenance activities during CP7. Network Rail Scotland also proposes to use operational controls, such as speed restrictions to manage these risks but that this will result in an increase in service affecting failures of assets towards the end CP7 and a decline in its overall measure of asset sustainability.

Like that of England and Wales, RMT is deeply concerned about this approach which as we have previously stated amounts to a dangerous and reckless way to run a railway for the next five-year period. We do not agree with ORR, as the health and safety regulator, that this is an acceptable way to run and railway and manage risk. This underfunding, managed decline and risk management will ultimately pile more pressure on our railway and increase the risks to both passengers and railway workers in the short, medium and long-term.

Earthworks and Drainage

RMT welcomes ORR demanding that Network Rail Scotland to pay particular attention to the renewals and maintenance needs of earthworks and associated drainage and highlighting how earthworks and drainage failures can have catastrophic consequences, for example the Carmont derailment.

ORR issued an expectation for Network Rail Scotland to provide more details of its proposals regarding earthworks and drainage "to demonstrate how it is implementing the action plans developed following the Carmont investigations" in its final determination but RMT is concerned that this has not been included in the draft determination almost 18 months after the RAIB report into the Carmont derailment was published.

[19] ORR Draft Determination Overview Scotland P.29 https://www.orr.gov.uk/sites/default/files/2023-06/04-pr23-draft-determination-overview-scotland.pdf

Maintenance

ORR highlight how Network Rail Scotland's proposed approach in managing the risks of cutting renewals by increasing maintenance is wholly reliant on implementing Network Rail's 'modernising maintenance' programme but ORR specifically mention that this programme risks losing knowledge, capability and expertise in many asset safety areas and safety specific advice roles. RMT restates our concerns with the largely untested and unimplemented Modernising Maintenance programme which a huge amount of expectation is being placed to manage the risks of cutting renewals funding in CP7.

Modernising Maintenance - safety concerns

The ORR draft determination, supporting document - health and safety makes alarming reading – and due to this RMT call on ORR intervene and insist that NWR withdraw their planned "efficiency savings" for CP7.

Modernising maintenance

RMT are concerned that Network Rail's approach to maintenance in CP7 is deeply reliant on the Modernising Maintenance Programme, not only is this programme not fully implemented (and is unlikely to be when the CP7 period begins in April 2024), the program in itself significant risks which we have listed below, these are all factors which NWR should reflect in their Health and Safety plans for CP7.

- Lack of resource/staffing levels
- Cross discipline/boundary working (Isolation assistants/hosting)
- Joint Response Teams
- Inadequate risk tolerance and inadequate control measures
- Fatigue
- Training competency requirements in new model are not fully understood (leading to training delays, training not completed)
- Low engagement/motivation of individuals post-change (due to lack of confidence regarding change/denied voluntary redundancy/delayed voluntary redundancy/unwilling to be part of new organisational change/dissatisfaction with new role, leading to impact on team dynamics, failure to stay alert, attrition)
- Changes pertaining to Modernising Maintenance are not reversible if they fail to deliver on expectations (e.g. resource model is undersized due to being applied at different scales within the organisation, lack of trial period, lack of business contingency plan, no reversibility plan in place before PIR, VR scheme)
- Failure to communicate change effectively during transition period due to communicator skill set, or ineffective communications and briefings.
- Miscommunication/Communication plan not in place after Go Live, resulting in poor engagement and understanding, change process not embedded, employees fail to see benefits of MM, negative culture/team dynamics.
- Heightened level of risk associated with critical defects at Go Live due to failure to manage critical defects prior to Go Live and reduction in team size

- Resource model does not provide sufficient planning resources and their competencies/job descriptions, (e.g. isolation planner) resulting in planning not done, impact to planner health and wellbeing.
- Unclear accountabilities/responsibilities around overlapping skills, due to uncertainty about what are the overlapping skills, what jobs do they apply to, and are they mandatory, leading to individuals rostered for tasks/induced into performing tasks outside of their competency.
- Increase of night working
- ISO assistants being utilised to assist with Long Blue Earths

Control of risk

1) *Reasonably practicable*

The concept of "reasonably practicable" lies at the heart of the British health and safety system. It is a key part of the general duties of the Health and Safety at Work etc. Act 1974 – and given this it is very worrying that in a number of respects ORR doubt the ability of NWR to comply with these standards in respect to the "Market led approach" they intend to adopt in CP7 in relation to asset management.

2) *Hierarchy of Controls*

The hierarchy of controls is a method of identifying and ranking safeguards to protect workers from hazards. They are arranged from the most to least effective and include elimination. Given this it is worrying that NWR are proposing to use less effective safeguards in CP7:

- NWR's Technical Authority have found four areas "of concern in the planned level of renewals", which as ORR write "indicates that the mitigations in place to control the increase in risk are not yet managed so far as reasonably practicable". RMT are concerned that with the reduction in reduced asset renewals, and NWR future reliance on additional maintenance and operational restrictions that this will import additional risk into the safe running of our railways
- The reduction in structure renewals is very concerning, most markedly Wales and West where it is intended there were will be a -37% change from CP6 to CP7. ORR must insist that these planned reductions in CP7 are reversed. ORR have already had to highlight to NWR (letter of 15th May 2023 to NWR Chief Exec) of non-compliance in proactive examinations. NWR plans to move to operational controls such as speed restrictions /road/line closures, moving protections to methods that are less effective, as they are reliant on individuals making correct decisions.

As the rail safety regulator ORR must intervene to ensure that NWR are not in breach of their legal requirements as per the Health and Safety at Work Act, 1974 and Management of Health and Safety at Work Regulations 1999, Regulation 4.

In relation to NWR plans for CP7 in relation to reduction in earthworks spends – you have already highlighted in your Annual Health and Safety on Britain's Railways, you wrote in relation to NWR plans not to use dedicated drainage teams that "continuing with, in effect the status quo may lead to a failure to learn the lessons of Carmont". It is your role as the regulator to stop this from happening.

Occupational health

It is disappointing to read that capital spend on health is relatively modest and that that there is currently insufficient information to provide in the SBPs to illustrate the adequacy of plans for occupational health.

In relation to the health of our members, RMT are concerned to learn that it is unclear how asbestos management will be assured during CP7 and that more detail on Diesel Engine Exhaust Emission is needed.

ORR write of the concern that they found that there was variability across regions in regard to the detail of NWR fatigue proposals - also of the uncertainty as to whether NWR will be able to achieve its objective of an integrated fatigue management system. Fatigue is currently a significant problem for many RMT members, and we fear that modernising maintenance will only exasperate this, particularly in relation to the move to more night working for track maintenance workers. So to learn that under CP7 there will not be sufficient measures in place to control the risks from fatigue for NWR staff and its contactors – is doubly concerning.

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Scotrail

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

Whilst we support the broad objectives of the Review in terms of a proportionate change in light of the uncertainty of the future structure of the industry we feel that with so many areas still not locked in (S8 rates, S4 ACS and opt out, Network Grant levels, FTAC etc) it is difficult to comment in detail on the draft determination. Once some of these parameters are known we should be able to comment further on the overall determination.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

How does the creation of a Scottish Train Planning team impact the Settlement Agreement for SO or does the new team still sit under the auspices of the SO for funding etc. ?

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

Due to the delay in the publication of the SBP for Scotland there is no detail contained within the Draft Determination as further development work is required by NR Scotland with a wider set of stakeholders. We look forward to seeing this information in the Final Determination.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

We are supportive of the level of both the On Time and PPM measure as proposed by ORR subject to any further evidence from Network Rail on the On Time target.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

No comments on the draft determination.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

We believe that the value of the performance fund for Scotland should have at least a minimum level set by the Regulator and that it should not just be left to Network Rail to decide, this will bring this into line with the mandated amount set within the review for the other Routes. Uncertainty over Schedule 8 and thus Schedule 4 rates means that the Schedule 4 & Schedule 8 outgoings could be vastly different from the draft numbers depending on where the rates end up falling. We note that with the reduction in Renewals there is a risk of increase in the number of Temporary Speed Restrictions (TSR's). Considering experience within Scotland where a number of TSR's have been on for a considerable time we would like to see how this action by Network Rail supports both the Performance and Journey Time aspirations.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

No comments.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

We are supportive of the ORR's position that more work is required by Network Rail Scotland to firm up its plans prior to the Final determination.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

We do not support the 7% increase in VUC against a background of much less usage than was originally forecast for CP6. Whilst we appreciate that Network Rail will have to increase Maintenance volumes due to the reduction in renewals, we do not feel that this increase has been properly evidenced given the likely reduction in asset usage.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

The dilution of the S8 rates has a wide-ranging impact on the incentive to improve performance, currently it is widely used to promote business cases for schemes to improve performance. With the reduction in rates this methodology can no longer be supported, and NR and Operators will have to look beyond S8 for the justification to invest in performance improvement plans. We can also foresee a dynamic whereby if Operators have opted out the method of delivery will be simply down to the most cost-efficient method of delivery for Network Rial with no or little cognisance of the passenger impact. We can also see an impact on any SPP claim, under the current regime the revenue losses would have to be significant to substantiate a claim, with the vastly lower payments through Schedule 8 SPP claims will have a lower threshold of loss before becoming valid and thus more likely to take place and thus push up costs to manage these claims for both NR and Operators.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

No comments.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

No comments.

Any other comments on managing change.

None

13. Are there any other comments you would like to make?

None at this time, we feel that there are too many unknowns within the Draft to comment anything further and look forward to further clarity as more parameters are published over the coming months and the Final Determination publication.

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Consent

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PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Scottish Association for Public Transport

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

This response is from the Scottish Association for Public Transport. As a public transport interest group (formed over 50 years ago), our response is confined to observations on issues that affect rail users.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our ScotOurland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

We support ORR's proposed additional expenditure on core renewals and targeted train performance fund. Network Rail's planned increase in speed restrictions to manage the impact of reduced renewals would potentially worsen punctuality and/or increase journey times, neither of which is desirable.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

Our organisation has had no engagement from Network Rail on the CP7 plan.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

We welcome the focus on train performance target set at 92.5%. Improved timetabling is also an important outcome. A Scotland-based timetabling team capable of delivering a reliable ScotRail timetable with more regular interval timings and better connections throughout the ScotRail network, and also with Anglo-Scottish services, should be the objective. We welcome the recognition that, particularly on routes with less frequent services, it is important for passengers that trains may be delayed by a short time to await connections where relevant.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

In addition to lifts and escalators, problems for passengers caused by platform heights and lengths need to be identified. Plans for replacement rolling stock for many Scottish internal routes is an opportunity to produce an improvement plan for the train/platform interface at stations where there are problems due to height or curvature. On some routes (eg West Highland Mallaig extension) platform lengths slightly shorter than trains cause considerable passenger inconvenience that could be resolved by modest extensions to platforms or introducing trains with selective door opening. A review is needed.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

Any disposal of railway land should be subject to thorough investigation of its potential use in future projects, eg. Clyde Metro, extension of Edinburgh Tram, re-opening of Dyce-Ellon railway, introduction of 400 metre HS2 trains to Glasgow and Edinburgh, etc.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

No comment.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

No comment.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

Charter trains are important particularly to Scottish rural lines and the tourist industry which is a major employer in Scotland, so we would oppose any moves to increase the VUC towards full recovery of costs where this could threaten the viability of charter trains. The low percentage of Network Rail's income from charter trains means that continuation and expansion of these trains are more important to the Scottish rural economy than to Network Rail's income.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

We note that on Scottish domestic routes the close ScotRail/Network Rail arrangement reduces the need for a compensation system. This may reduce the cost of infrastructure projects, though there still needs to be an incentive to reduce planned service disruption.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

No comment.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we* *propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

No comment.

Any other comments on managing change.

None.

13. Are there any other comments you would like to make?

Diversionary Routes: Given the increasing incidence of disruption due to climate change (eg flooding), we suggest that pre-planned diversionary strategies for alternative routing for major disruption should be prepared. Alternative routes are available on some of the main inter-urban lines, eg:

a) Glasgow Queen Street-Fife-Dundee-Aberdeen pre-planned diversionary timetable to bypass any blockage between Larbert and Perth
b) Edinburgh-Stirling-Perth-Dundee-Aberdeen diversionary timetable to avoid any blockage through Fife, or Forth and Tay bridges
c) Ayr-Kilmarnock-Glasgow Central (dependent on future bimode electric/battery rolling stock) to avoid any blockage between Irvine and Paisley
d) Glasgow Central via Shotts to Edinburgh to avoid any blockage anywhere from Glasgow Queen Street to Haymarket
e) Helensburgh/Balloch/Milngavie-Anniesland (change to Anniesland-Queen St High Level trains) in the event of disruption through Partick or Low Level tunnel lines

The objective would be to be able to switch to a back-up timetable relatively quickly to keep main inter-urban travel links operating in the situation where a major disruption had occurred, eg last year's flooding in Perth where passenger confusion lasted for a considerable time. This would depend a plan overcoming crew and rolling stock implications.

Blanket Speed Limits: As periods of bad weather increase in frequency, the incidence of blanket speed limits as low as 20mph on journeys of up to 160 miles may become more regular, reducing the attraction of rail as an alternative road. It would be worthwhile investigating if a risk assessment would allow sections of line to be categorised into high risk and lower risk, allowing two levels of emergency speed limits to be imposed on different parts of each route during bad weather. New lineside boards (painted yellow?) could be provided on high risk sections of route to indicate that the lower speed limit should be observed when a weather-related temporary speed limit is in force. Could greater use of drones help to confirm the status of track during poor weather, subject to wind conditions?

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

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Consent

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Format of responses

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Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Tarka Rail Association

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

No specific comments.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

Within the framework of the next 5-year period to 31st March 2029, which covers the remaining period of Great Western Railway's contract to 25th June 2028, we wish to see active recognition of the dynamic growth in ridership being witnessed on the Tarka Line, connecting directly to one of the most successful provincial cities in the country, reflected in the quality of the supporting infrastructure. Before the end of CP7 we expect to be travelling over continuously-welded rail throughout rather than any of the four sections of jointed track which still survive – south of Barnstaple, Eggesford, Morchard Road, and Crediton – and we do not expect train crew still to be exchanging tokens at Crediton and Eggesford and also operating the level crossing at the latter. We should also wish to see, before the end of CP7, platform 2 at Barnstaple station restored to operational use as a siding for storing trains be they 'cripples,' overnight stores, or even tours.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

We have a generally good relationship with Network Rail locally.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

No specific comments.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

No specific comments.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

No specific comments.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

No specific comments.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

No specific comments.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

No specific comments.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

No specific comments.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

No specific comments.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

Under ***section 3.4*** *of the* ***managing change*** *consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

No specific comments.

Any other comments on managing change.

No specific comments.

13. Are there any other comments you would like to make?

Elaborating our reference to dynamic ridership growth in response to Q2, we observe that journeys recorded by GWR on the Tarka Line continue to break all records since the current series began in 2001. In the first seven 4-week periods of calendar 2023 ridership was 11.5% ahead of the comparable period in 2019. In 2022/23 annual ridership exceeded 700k for the first time ever. The Tarka Line may be perceived as the operator's longest branch line, but for the communities which it serves it's Northern Devon's Main Line.

Thank you for taking the time to respond.

Annex A: Publishing your response

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PR23 draft determination consultation

Response from Transport Focus

August 2023

Transport Focus welcomes the opportunity to respond to the above consultation.

Transport Focus is an independent, statutory consumer watchdog promoting the interests of transport users. Our remit covers rail across Great Britain, bus, coach and tram in England (excluding London) and users of the Strategic Road Network in England. Working with transport providers and Governments across England, Scotland and Wales we ensure that the users' voice is heard.

General comments

Transport Focus broadly supports the conclusions in the draft determination for Network Rail in CP7. We agree with the particular focus on train performance and the importance of achieving 'ambitious but deliverable improvements…'

Stakeholder engagement

Transport Focus welcomes the emphasis within the document on Network Rail engaging with stakeholders. Our research continually emphasizes the value of involving users and stakeholders.

We welcomed the opportunity to work with Network Rail at a regional level as part of CP7 regional business plan submissions. We also welcomed the commitment and effort made by Network Rail to engage with a wide range of stakeholders and to set up engagement/ challenge groups – with Transport Focus acting as an independent chair in some of these. We believe that this engagement did help all parties focus on the needs of users.

We agree with comments made by ORR in the draft determination about continuing this engagement throughout CP7. There is scope for engagement on the delivery of the plans and we agree that this would create an element of accountability as to how Network Rail is performing against its plans. However, it will be important that there is a clear and well-defined purpose to this engagement – stakeholders will need to be clear on what value they can add and how much time it will take. This will help to maintain interest and engagement during the process.

Transport Focus made another input into this process via passenger research. This began with a large qualitative exploration of passengers needs in the Wales and Western region. This was followed by a large national quantitative study 'Britain's railway: what matters to passengers' which gave every region an up-to-date reading of its passengers' key needs and priorities. Both were conducted in partnership with

Network Rail. Again, we acknowledge and welcome the commitment shown by Network Rail in supporting this work.

We believe that this research was immensely useful in ensuring that Network Rail put users' needs at the heart of its plans. It also provided stakeholder panels with the evidence to challenge Network Rail if required. We think there is a good argument for similar research to form part of, and to underpin, future business planning cycles.

Network Rail's proposed outcomes

We agree with ORRs conclusion that there should be no further decline in train performance, and for Network Rail to deliver ambitious but deliverable improvements for passengers and freight customers.

We acknowledge the financial pressures on the railway and that it is difficult to balance the needs of all passengers. However, passengers rely on the railway to get to work, for business and for leisure purposes and when it goes wrong it can be very frustrating. As such they see a punctual service as the key success criterion for their journey and a vital prerequisite for building trust between passengers and the railway. Our study 'Britain's railway: what matters to passengers' clearly shows the importance of a punctual and reliable railway.

We also welcome the use of 'on time' performance as a key metric within the draft determination. Our research with ORR shows that this better mirrors passengers' own perceptions of punctuality[1]. This also has the benefit of being easily understood, and therefore trusted, by passengers.

Network Rail's regional business plans referred to a 'value of service / market-led' approach that prioritised renewals and maintenance expenditure on the key revenue generative flows. If parts of the network are being prioritised over others, then it will be important that performance monitoring regimes are sensitive enough to pick up on these differences – both between regions and on routes within a region. Without this disaggregated data we may not be able to identify the impact of the value of service approach. In the spirit of transparency and accountability we think there is also a strong case for this disaggregated data to be in the public domain.

We also welcome ORR's decision to monitor, and hold Network Rail to account on, two customer satisfaction metrics (satisfaction with the overall journey and with the experience at infrastructure managed stations).

Accessibility

We agree with the broad conclusions on accessibility in the draft determination. Compliance with design standards, training and provision for turn-up-and-go services, tactile paving on platforms and reliability of lifts and escalators are all important considerations.

[1] Train punctuality: the passenger perspective. Transport Focus and ORR. 2015

We also welcome the commitment to build better data on accessibility, especially the provision of ‘live/real-time’ information.

Health and safety

We acknowledge that funding constraints facing the railway have driven a move to a more market led approach whereby renewals and maintenance are prioritised on some parts of the network over others. However, we agree with ORR that this creates additional risks. We support the additional requirement placed on Network Rail in the draft determination on how it manages these risks. We also believe that any such market-led approach must be carefully monitored, especially in its early stages.

Transport Focus
August 2023

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Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Transport for All

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

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For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

Click or tap here to enter text.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

Click or tap here to enter text.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

In terms of customer satisfaction outcomes, we are pleased that the ORR has plans to hold Network rail to account on customer satisfaction with both journeys and stations. It is disappointing that the England and Wales SBP makes no direct references to customer satisfaction, particularly in the realm of accessibility (though as outlined below, we are aware that the England and Wales SBP has made many specific references to accessibility elsewhere in the document). We also acknowledge that the Scotland HLOS does explicitly refer to accessibility as a measure of customer satisfaction, though outline below our disappointment with the lack of accessibility mentioned in the SBP. We welcome Network Rail's commitment to implementing an industry wide customer information system for accurate information, and we would stress the importance of this information being timely when it comes to lift and escalator outages, staffing, and other facility closures at stations. We are pleased to see that the ORR has identified the need for a new customer satisfaction survey- we would encourage the ORR to stress the importance of customer satisfaction "good practice" to Network Rail in order to introduce the new customer satisfaction mechanisms- we would also like to see a stress on the accessibility of journeys and stations as a key component of customer satisfaction, potentially with its own survey or at least section.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

Whilst aspects of the ORR's assessment of accessibility are promising, such as the findings of increased lift and escalator renewals in Scotland and the increase in step free journeys across England & Wales, the overall assessment does not go far enough to ensure Network Rail satisfies its accessibility responsibilities. It is not acceptable that the ORR simply "expects" the silence on accessibility in Network Rail Scotland's plans to be addressed "in future versions of its plans", with no other oversight or accountability measures mentioned in the draft determination. The ORR has described its plans to ensure the accountability of Network Rail to adhere to the Station Code as described in the England & Wales SBP, which is encouraging. We welcome the England & Wales SBP plans for providing Changing Places toilets at national hub managed stations. Whilst we agree with the assertation that current DIA/EqIA usage is inconsistent across stations, any new DIA standard must be created in conjunction with disabled accessibility consultants in order to ensure a high standard of audit. We would urge the ORR to request information from Network Rail as to whether this is the case, and to encourage Network Rail to rethink this new standard if it is not. With the proposed staffing changes as a result of the ticket office closure consultations, we are concerned that despite the commitments Network Rail have made to training and provision of turn up and go in the England and Wales SBP, this has not been thought through. The ORR's monitoring of this commitment will be vital, and should be of the utmost priority. We would welcome regular updates from the ORR on the delivery of this commitment, as well as the delivery of the tactile paving fitments. The plan to integrate accessibility data and increase the provision of live information for passengers is an important one, and we welcome the ORR's plan for monitoring through the Smarter Information- Smarter Journeys project. Whilst we cautiously welcome the development of a step free prioritisation tool (provided its development and review are coproduced with disabled people), it is disappointing to see that the ORR does not plan to hold Network Rail to account on its usage. Step-free journeys, as identified elsewhere in this document, are vital to ensuring disabled passengers can travel with ease and independence on the rail network; the proper usage of this tool could have the potential to enhance many passenger journeys, which the ORR should take more of a role in delivering. The plans in the England and Wales SBP to improve lift and escalator fault response is welcomed, and we are pleased to see that the ORR is engaging with Network Rail on assessment and metric usage on this issue. We are extremely disappointed, however, to see that the ORR is not proposing any success measures for accessibility. The reasoning for this, that focussing on the delivery of certain outcomes "risks skewing investment so that it does not deliver the best overall outcome for users" suggests that the journeys of disabled passengers are deprioritised in relation to the journeys of non-disabled passengers. Whilst we agree that a sole focus on measurable outcomes such as step-free journeys would potentially result in other, less measurable outcomes being neglected, it is possible for both of these things to exist in Network Rail's plans, with measures put in place to avoid this situation. Measuring accessibility is vital to ensuring disabled passengers can access the railway, and we would strongly urge the ORR to rethink the decision not to do so.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

Click or tap here to enter text.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

Click or tap here to enter text.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

Click or tap here to enter text.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

Click or tap here to enter text.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

Click or tap here to enter text.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

Click or tap here to enter text.

Any other comments on managing change.

Click or tap here to enter text.

13. Are there any other comments you would like to make?

Click or tap here to enter text.

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

Should you wish for any information that you provide to be treated as confidential, please be aware that this may be subject to publication, or release to other parties or to disclosure, in accordance with the access to information regimes. These regimes are primarily the Freedom of Information Act 2000 (FOIA), the UK General Data Protection Regulation (UK GDPR) the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004.

Under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, if you are seeking confidentiality for information you are providing, please explain why. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on ORR.

If you are seeking to make a response in confidence, we would also be grateful if you would annex any confidential information, or provide a non-confidential summary, so that we can publish the non-confidential aspects of your response.

Any personal data you provide to us will be used for the purposes of this consultation and will be handled in accordance with our privacy notice, which sets out how we comply with the UK General Data Protection Regulation and Data Protection Act 2018.

Consent

In responding to this consultation you consent to us:

- handling your personal data for the purposes of this consultation; and
- publishing your response on our website (unless you have indicated to us that you wish for your response to be treated as confidential as set out above.)

Your consent to either of the above can be withdrawn at any time. Further information about how we handle your personal data and your rights is set out in our privacy notice.

Format of responses

So that we are able to apply web standards to content on our website, we would prefer that you email us your response either in Microsoft Word format or OpenDocument Text (.odt) format. ODT files have a fully open format and do not rely on any specific piece of software.

If you send us a PDF document, please:

- create it directly from an electronic word-processed file using PDF creation software (rather than as a scanned image of a printout); and
- ensure that the PDF's security method is set to no security in the document properties.

Transport for Greater Manchester

Response to Office of Rail & Road’s Draft Determination for Network Rail in Control Period 7

Transport for Greater Manchester

Introduction

This document contains Transport for Greater Manchester’s response to the ORR’s Draft Determination for Network Rail during Control Period 7 (2024 to 2029).

Specifically, the document is centred around the Settlement document for the Northwest & Central region, in which Greater Manchester lies. In accordance with this specific settlement document, TfGM’s response is primarily structured around the four key objectives that the ORR have identified (safety, performance, asset sustainability, efficiency). We have also provided a response to some of the secondary themes within the draft determination.

31 October 2023

Safety

After reviewing the response to Central and North's safety plan, TfGM agrees with the concerns ORR have raised around safety in the region. Furthermore, we are satisfied that the ORR has taken the appropriate measures to mitigate safety risks. We would also encourage Network Rail to complete its operational delivery risk assessment to further enable ORR to understand and assess the risks of reduced renewal levels and declining infrastructure condition through CP7.

Performance

On time

TfGM is fully supportive of ORR's draft decision to set a point (not range) trajectory for CP7 as we believe a set non-negotiable target is the most appropriate option to ensure Network Rail will aim to maximise their performance.

Although we are confident that ORR have an evidence-based approach to calculate the On time trajectory for the Northwest and Central region, we must emphasise that this target should be both attainable and ambitious. TfGM considers that the initial on time target for NR may need to be reduced to better align with current performance levels, however, the year-on-year improvement increments could be increased beyond the current figure to encourage continuous improvement.

Passenger Cancelations

We support the decision to set a point trajectory for CP7 and agree Central and Northwest region should look to be as competitive as other regions. However, we recommend that the ORR could assess the possibility of including a year-on-year rise for this target, using an evidence-based approach to calculate an appropriate incremental rise. This could encourage NR to strive for a year-on-year improvement and reflects TfN's aspirations reflected in their response to this consultation, to allow Northern regions to 'level up'.

Freight cancellations

TfGM is supportive of the inclusion of a point trajectory and the value of this trajectory, as we believe the figure represents future freight paths.

Freight Growth

TfGM recognise the benefits of rail freight and as such, fully support the setting of a growth trajectory of 8.6% by the end of CP7. However, while we support a growth trajectory, we are also aware that the wider economic activity may lead to wider fluctuations in overall freight movements that are outside of Network Rail's control. For example, should the economy contract, it will be more difficult for Network Rail to achieve the growth trajectory than if the economy grows significantly.

Therefore, we consider that there may be more value in targeting growth in rail's market share for freight moved, rather than absolute growth. By targeting market share, it would be encouraging mode shift to more sustainable means of transport, better helping to support wider national and local targets to achieve zero carbon emissions, improve air quality and reduce road congestion. A modal share target would also be independent of wider economic trends, retaining an attainable target of growth even under overall market contraction.

Similarly, under economic growth, a modal share growth target will ensure there is incentive for rail to maintain and grow its' share of the overall market to support the wider environmental benefits of moving freight by rail. As an example, under the current approach, if the overall market for freight moved grows by a greater amount than the growth trajectory (i.e. greater than 8.6%), it is possible for Network Rail to meet its targets while losing overall modal share, which will have a detrimental impact on the environmental targets.

We do not have access to suitable data to advise on what a realistic modal share target should be, but believe that the ORR will have access to sufficient data to be able to set an ambitious yet attainable target.

Asset Sustainability

Expenditure increase

Whilst we support the protection of core asset renewals in CP7, it is important that slippage to timescales should not be an accepted norm for the industry. With the inclusion of a £300 million expenditure, additional mechanisms should be included to incentivise NR to reduce unacceptable programme slippage to the best of their ability.

Additionally, through historical trends in large programmes, we believe costs tend not to be reduced as a result of the programme slippage and so TfGM do not necessarily accept the fact that the funding identified will be available for renewals elsewhere.

Asset and environmental sustainability

TfGM welcomes the increased awareness and implementation of sustainability measures and are confident the ORR have critically reviewed NR methodologies.

Stakeholder Engagement

TfGM are satisfied that the ORR are confident that Network Rail maintains a strong focus on increased stakeholder engagement within the Central and Northwest region. We further ask that the ORR compares NR's strategy between each region, to ensure that there is a consistent and fair approach to improving stakeholder engagement throughout the UK.

Accessibility

TfGM are also concerned that NR's proposed renewal plan would not be able to address all lifts and escalators that are beyond design life. Therefore, we suggest that the ORR should require the region to keep renewals in this area under review during CP7 to maximise accessibility outcomes.

Efficiency

Through our own work to try and sponsor investment in the Rail industry, we feel that costs are significantly higher than they should be and have yet to see evidence that Network Rail are capable of understanding why costs remain high and being able to put in place actions to make investing in the rail network more affordable. We suggest that the industry could conduct a review of the main drivers behind the accelerated costs and look to identify means of reducing these to make the rail network more affordable.

Financial Risk

TfGM welcomes the increase of risk funding pool, as based on our experience we believe scheme costs often overrun their original estimates.

PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Transport for London

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

No general comments from TfL.

2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

Refer to our comments in Section 4 on proposed outcomes for Network Rail.

3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

It will be important to ensure that the Regions engage with operators to produce train performance targets that deliver the requirements of those operators, together with any supporting measures that are necessary. Refer also to our comments in Section 4 below.

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

The specification of train performance targets at the Regional level is too aggregate to be that useful other than as a general indicator of expectations, particularly where train operators cross Regional boundaries. Binding targets should therefore be set at operator level to supplement these and make it clear what Network Rail is expected to achieve for individual operators. It is disappointing that there is no target to achieve growth in the passenger market (one is specified for the rail freight market). The passenger market is central to the overall economic value offered by the rail network and its finances so it is important that there are strong incentives to grow this market to improve rail's financial performance and maximise its economic value.

5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

We support the ORR's proposed approach, which focuses on the following areas: ensuring compliance with design and assessment requirements for accessibility, additional training for "turn up and go" assistance, fitment of tactile paving on platforms, improving data quality and availability in relation to accessibility and improving response times to escalator and lift faults.

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

We note the need to prioritise renewal expenditure and agree that this should be done where routes contribute the greatest value to the overall network. The consideration of value should include the passenger volumes conveyed as well as the revenue generated to ensure that the full economic value of any route is understood as part of any decision making process.

7. Our review of Network Rail's National Functions

For further information, please see our related supplementary document on national functions.

No comments from TfL.

8. Our assessment of health and safety

For further information, please see section 5 of our England and Wales and Scotland overview documents and our related supplementary document on health and safety.

We note the issues inherent in reprioritising renewals expenditure. It is critically important that the impact on risk profiles by asset type is understood and mitigated to ensure that risks remain as low as reasonably practicable.

9. Access Charges in CP7

For further information, please see section 10 of our England and Wales and Scotland overview documents and our related supplementary documents on access charges.

We note that the intention is that the Fixed Track Access Charge (FTAC) will continue to be set so as to cover the fixed costs the network that are not met by the Network Grant. We support this approach; indeed it is critical to ensuring the financial stability of third party funders like ourselves. We remain concerned about the potential for the FTAC to be increased if the Network Grant is not agreed to the required timescales or is not paid as expected during the Control Period. Every effort must be made to avoid this scenario. In the event that it does occur there must be a mechanism for third party funders to recover the additional costs they have incurred promptly to ensure their financial stability. Currently the contractual mechanisms proposed do not do this which generates significant financial risks for third party funders. To help all parties gauge the extent of financial risk arising from this matter the ORR should publish the FTAC payable by operator both with and without Network Grant payments. We will also comment on the proposed access charge mark up for airport services when this proposal is finalised as part of the consultation on it.

10. Schedules 4 & 8 Incentives in CP7

For further information, please see section 11 of our England and Wales and Scotland overview documents and our related supplementary documents on incentives.

We are concerned that the very significant reduction proposed to Network Rail's Schedule 8 payment rates is inappropriate. We acknowledge the analysis that has been undertaken on this but still consider the outcome to be counterintuitive, given that rail demand can now be considered to be more elastic than before the Pandemic given the greater flexibility now on offer to commuters who can choose to work from home with far greater ease than was previously the case. We would anticipate that this will make the rail travel market more sensitive to delays, not less so. At the very least the scale of change should be minimised and phased in during the Control Period. This process should be coupled with an ongoing review of the demand elasticity associated with delays for all market segments and operators as the post pandemic travel market continues to develop and evolve, with a recalibration occurring based on the outcomes of this analysis if they are different to those that have informed the CP7 conclusions. We are also concerned about the proposed suspension of Schedule 8 payments between Great British Railways and its Operators. These financial flows provide an important way of directly incentivising good performance that should not be lost or replaced with less direct incentives to ensure the ongoing growth of the rail travel market.

11. Financial framework for CP7

For further information, please see section 12 of our England and Wales and Scotland overview documents and our related supplementary document on the financial framework.

We are broadly comfortable with the approach taken by ORR / Network Rail in determining Network Rail's cost of debt that is used to calculate the Crossrail Supplementary Access Charge (CSAC), subject to a couple of matters referenced in the attached "TfL consultation response on CP7 CSAC" and supporting analysis report from Frontier Economics which would result in a small reduction to the rate published in the Draft Determination. We invite the ORR, Network Rail and the Department for Transport to engage with us during CP7 on wider reform of the CSAC given the significant changes that have taken place in the rail industry and wider economy since it was designed.

12. Managing Change in CP7

For further information, please see section 13 of our England and Wales and Scotland overview documents and our managing change consultation document.

*Under **section 3.4** of the **managing change** consultation document, we are seeking stakeholders' views on if the threshold for categorising change to the allocation of Network Rail's centrally held risk fund is appropriate. Currently in the policy we propose that changes up to £50 million (fifty million pounds) are notified and changes above this threshold are consulted.*

No comments from TfL.

Any other comments on managing change.

No comments from TfL.

13. Are there any other comments you would like to make?

No further comments from TfL.

Thank you for taking the time to respond.

Annex A: Publishing your response

We plan to publish all responses to this consultation on our website.

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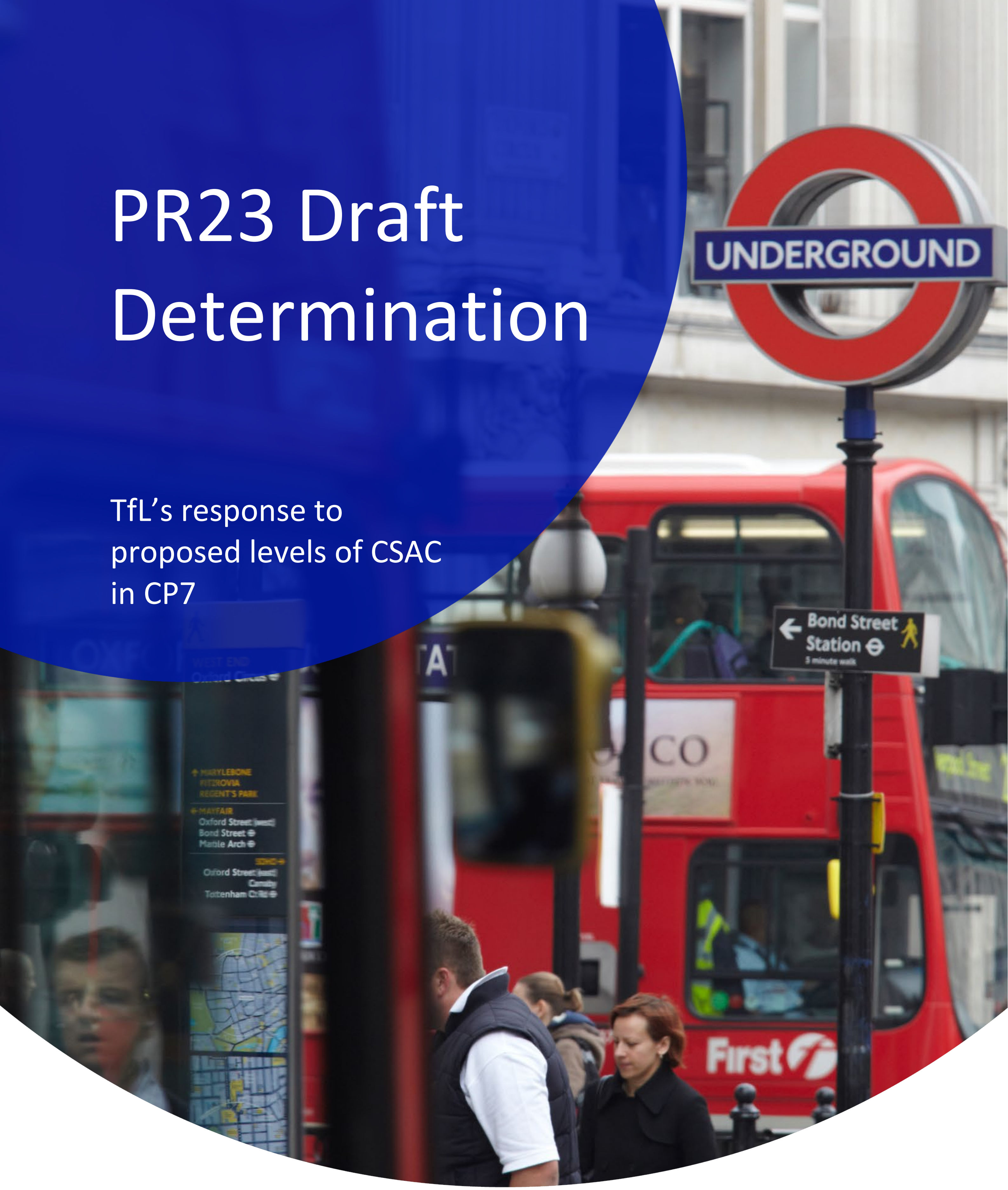
PR23 Draft Determination

TfL's response to proposed levels of CSAC in CP7



EVERY JOURNEY MATTERS

Summary

This PR23 draft determination (DD) response provides Transport for London's (TfL's) position on the aspects of the financial framework policy position related to the Crossrail Supplementary Access Charge (CSAC). Responses to other aspects of the DD are contained within the pro-forma consultation response document.

The CSAC is a significant exposure for TfL

As part of the Crossrail Project, c.£2bn of enhancements, "On Network Works" ("ONW"), were delivered and financed by Network Rail ("NR") between 2012-2022. To recover the investment costs of these works, NR levies a supplementary access charge – referred to as the Crossrail Supplementary Access Charge ("CSAC"). Under the Crossrail Track Access Option ("CTAO") in place, TfL pays the CSAC to NR.

As part of the calculation of the CSAC, the rate of return (RoR) parameter is a critical input to the level of charge paid. The financial framework policy position contains a draft figure for the RoR parameter, which is based on NR's cost of debt, and is updated as part NR's periodic review cycle.

A one percentage point change in the RoR parameter leads to a change in the annual CSAC of around £15m (2022/23 prices), this is equivalent to around £70m over CP7 (2022/23 prices).[1] For TfL this equates to around 2% of our capital renewal plan for the 2024/25 financial year and 5% of total operating surplus.[2] Given the scale of this exposure for TfL, we have carefully considered the ORR's DD estimate for the cost of debt and set out our response in this document.

TfL has reviewed market information to assess the DD cost of debt

TfL's response on the cost of debt focuses on the 'cost of new debt' as this is the parameter which is sensitive to market conditions. This relates to the debt which is expected to be raised by NR over the course of CP7.[3] TfL has four key comments on the cost of new debt assumed by the ORR in its DD: [4]

- **The expected nominal cost of new debt for CP7 remains similar to the cost estimated by NR** – specifically, we find that market expectations for the National Loan Funds (NLF) rate, the rate which determines NR's cost of new debt, are approximately 4.2%. This is very

[1] Using OBR March 2023 forecast of RPI rate
[2] 2023 Business Plan, TfL, available at: https://content.tfl.gov.uk/2023-business-plan-acc.pdf
[3] The new debt raised is focused on re-financing activities.
[4] TfL has commissioned an independent review from Frontier Economics to support this response. More detail on Frontier Economics' analysis is contained within their document titled "Supporting analysis to TfL's consultation response on the CSAC" ("Frontier report").

similar to the rate used by NR, meaning there should be no significant movement between DD and Final Determination (FD) on the basis of market interest rate expectations.

- **There should be a deduction from the cost of new debt to reflect the terms of NR's loan agreements** – following clarification with NR, we note it did not make an adjustment to the underlying NLF rate when calculating their cost of debt. A deduction of 11bps, should be applied to reflect the terms of the loan agreement in place with DfT.[5]
- **The latest inflation forecasts suggest a figure higher than the 1.8% adopted by NR** - we find that a CPIH inflation rate assumption of approximately 2% for CP7 is supported by recent market data.
- **Inflation forecasts also suggest a higher wedge between RPI and CPIH than the 0.54% used by ORR in the risk free rate section of the draft determinations** – we find that a wedge of around 0.75-0.95% is supported by recent market data.

We summarise NR's calculations and our alternative estimates in the table below.

Table 1 – TfL summary of NR's cost of debt calculations and alternative estimates

	Step	NR/ORR	TfL	Notes
Nominal cost of new debt	A	5.6%	5.59%	TfL figure based on NLF forward rate of 4.2% plus a 1.5% margin, net of 11bps.
Real cost of new debt	B	3.77%	3.52%	Implied CPIH inflation of approximately 1.8% for NR and 2.0% for TfL.
Real cost of existing debt	C	1.27%	1.27%	NR figure based on index-linked bonds issued pre-reclassification and existing DfT debt.
Proportion of new debt	D	42%	42%	Proportion of new debt driven by refinancing of all existing DfT debt in CP7.
Overall real (CPIH) cost of debt	E = D*B + (1-D)*C	2.33%	2.21%	Calculated.
Overall real (RPI) cost of debt	F	N/A	1.26% - 1.46%	No inflation wedge included in the DD for the cost of debt. TfL apply a wedge of between 0.75-0.95%.

Note: Summary of NR/ORR estimate is based on correspondence with NR where it provided further information on the calculations

[5] We assume, in line with NR, that DfT loans comprise all new debt raised in CP7. The 11bps reflects the Debt Management Office (DMO) margin.

In addition to the points raised above, which suggest that the cost of debt currently proposed in the DD is too high, our broader concern is that the way in which NR is currently financed leads to a proportion of new debt being raised in CP7 which is markedly higher than in other regulated infrastructure sectors. If NR's financing arrangements remain unchanged then the proportion of new debt will increase even further over time.

This has the impact of increasing the volatility of the CSAC between periods, further increasing TfL's exposure to underlying changes in market interest rates. We therefore believe broader reform of the CSAC regime is needed and request to engage with the DfT and ORR on the future of the CSAC.

Going forward, TfL would like further engagement with the DfT and ORR on the future of the CSAC

15 years have passed since the CSAC was initially agreed, and in that time significant changes have occurred in the rail industry. In light of these changes, TfL believe there are several reasons to consider the future of the CSAC, these include:

- Changes to NR's financing following reclassification, and the associated regulated burden that now arises from the CSAC; and

- Increased macroeconomic volatility since the charge was established, including the challenges greater variation in the RoR parameter creates for TfL's cyclical business planning.

For these reasons, TfL finds it appropriate to consider the future of the CSAC, and would like to request further engagement with ORR, NR and DfT on this issue and potential options for reform which we have developed and assessed.

Introduction

Purpose of this response

As noted in the PR23 DD, the cost of debt which the ORR determines for NR, "*affects the Crossrail supplementary access charge (CSAC) income that Network Rail will receive in CP7*".[6] Specifically, it is TfL as the holder of the Crossrail Track Access Option ("CTAO"), that pays the CSAC to NR.

The CSAC represents a significant cost exposure to TfL, and the cost of debt parameter is a critical input to the level of charge paid. This response is therefore focused on the estimation of the cost of debt parameter for CP7, providing TfL's view on the analysis used in NR's proposal which informed ORR's DD.[7] We also briefly set out views on how the CSAC could be amended in future.

TfL has commissioned an independent review from Frontier Economics to support this response. More detail on Frontier Economics' analysis is contained within their document titled "Supporting analysis to TfL's consultation response on the CSAC" ("Frontier report").

Structure of the response

The structure of the response is as follows:

- **Context of TfL's response** – this section provides more detail on the interaction between NR and Crossrail, and illustrates the exposure of TfL to the cost of debt parameter in the ORR's financial framework policy position.

- **ORR draft determination for the cost of debt** – this section steps through each of the parameters that form the cost of debt estimate, providing TfL's view where relevant. This section also highlights where further analytical details are covered in the supporting Frontier Economics report.

- **Future of the CSAC** – this section sets out TfL's view on how the CSAC could be amended in future to ensure it is fit-for-purpose and best aligns with the ORR's duties. Evidence for these arguments is contained in Section

[6] ORR, PR23 draft determination: Policy position – financial framework, 15 June 2023, para 1.4.
[7] Following the publication of the DD, TfL requested some further details underlying NR's cost of debt calculation. This document reflects these figures in addition to those provided in the DD.

Context of TfL’s response

The CTAO and the CSAC

The construction of Crossrail involved a significant number of enhancements. Some of those enhancements on the Crossrail Central Operating Section (“CCOS”) were managed by TfL through its subsidiaries. Other enhancements on the existing rail network were undertaken by NR.

The works undertaken by NR are referred to as On Network Works (“ONW”). These works included enhancements such as the electrification of the route between Maidenhead and Airport Junction, and new twin track from Plumstead to Abbey Wood.

The costs of the ONW were financed by NR. To recover these costs, NR charges the CSAC. Under the Track Access Agreement (“TAA”), TfL (as holder of the “CTAO”) is responsible for paying NR the CSAC. The CSAC is paid in addition to other fixed and variable track access charges.

PR23 Draft Determination and the CSAC

The annual CSAC, defined in the CTAO as the Whole Year Payment Amount (WYPA), is calculated as follows:[8]

$$CSAC = \frac{OB \times RoR}{1-(1+RoR)^{-RL}}$$

Where:

RoR = Rate of Return in the relevant year;

OB = Opening Balance of SAC[9] in the relevant year; and

RL = Remaining Life[10] in the relevant year.

The OB figure tracks the outstanding balance associated with the ONW enhancements over time. This balance is inflation linked (to RPI). Given the formula above, a key component of the CSAC is the rate of return (RoR), which is a cost of debt measure.[11] The RoR value is determined as part of NR’s 5 year periodic review by the ORR. The real cost of debt is calculated solely for the purposes of the CSAC and is not used to inform any other charges on the GB rail network. The real cost of debt, along with the CSAC, charge is expected to be updated with the final determination value.

Implications of cost of debt parameter for TfL

[8] Crossrail track access option - amended and restated 2 September 2014, NR and DfT, p114, available at: https://www.orr.gov.uk/media/17100

[9] The balance of the Supplementary Access Charge (SAC) tracks repayments of the capital balance and inflation over time.[10] In the CTAO, the life is defined as initially 51 years and it reduces by one at the end of each year[11] Real RPI, pre-tax.

[10] In the CTAO, the life is defined as initially 51 years and it reduces by one at the end of each year[11] Real RPI, pre-tax.

[11] Real RPI, pre-tax.

To demonstrate the importance of the RoR parameter to TfL, we estimate that a one percentage point change in the parameter leads to a change in the annual charge of approximately £15m (2022/23 prices), this is equivalent to around £70m (2022/23 prices) over CP7.[12]

TfL's financial position is improving but remains constrained following the Covid-19 pandemic. We are therefore continually looking at sources of recurring operational savings that allow us to improve our operational surplus and free up scarce capital that can be used to support our renewals and enhancements programmes. This sensitivity of £15m per annum (2022/23 prices) is equivalent to around 2% of TfL's capital renewal plan for the 2024/25 financial year and 5% of total operating surplus.[13] Therefore increases in the charge represent a significant exposure for TfL.

There are also timing implications for TfL. The timetable for the Periodic Review means there is very limited time for TfL to adapt budgets for the upcoming financial year to take into account the final determination value of the RoR parameter. This lack of sight limits TfL's ability to budget and plan activities and potentially ties up capital that could be used for maintenance and renewals.

[12] Using OBR March 2023 forecast of RPI rate
[13] 2023 Business Plan, TfL, available at: https://content.tfl.gov.uk/2023-business-plan-acc.pdf

ORR determination for the Cost of Debt

Overview of the DD

For CP7, NR has estimated a real (CPIH) pre-tax cost of debt of 2.33%. In the DD, the ORR has highlighted that this figure drew on a range of data relating to:

- NR's existing debt;
- Forecasts for the cost of new debt; and
- A view on the proportion of existing versus new debt relevant for CP7.

The ORR has highlighted that NR's cost of debt figure is slightly higher than the values published in the UKRN (UK Regulators Network) most recent annual cost of capital report.[14] Nevertheless, ORR has agreed with NR's proposal and has included the 2.33% real pre-tax cost of debt figure in the DD in CPIH real terms.

However, the RoR parameter in the CSAC is a figure expressed in RPI terms. Therefore, an inflation wedge needs to be applied to convert the cost of debt into RPI real terms. This response therefore addresses both the 2.33% figure and the relevant RPI-CPIH inflation wedge.

Following the publication of the DD, TfL requested some further details underlying NR's calculations to provide some due diligence on the approach. Some of this further detail is reflected in the response below. However, we note that we have not received full details of all NR's calculations, in particular in respect of debt volumes and existing debt costs, meaning there are some figures we have not been able to verify.

NR approach to the cost of debt

NR has calculated the overall cost of debt by separately estimating the cost of existing debt, the expected cost of new debt,[15] and the expected proportion of new debt in CP7. This is set out in the table below.

Table 2 – TfL summary of NR's cost of debt calculations

	Step	Rate	Notes
Nominal cost of new debt	A	5.6%	Based on the National Loan Funds (NLF) rate plus a 1.5% margin.
Real cost of new debt	B	3.77%	Implied CPIH inflation of approximately 1.8%.
Real cost of existing debt	C	1.27%	Based on index-linked bonds issued pre-reclassification and existing DfT debt.

[14] The ORR did not specify precisely which figures were used when making this statement.
[15] Required to refinance existing debt that matures.

Proportion of new debt	D	42%	Proportion of new debt driven by refinancing of all existing DfT debt.
Overall real (CPIH) cost of debt	E = D*B + (1-D)*C	2.33%	Calculated.

Note: Summary based on correspondence with NR where it provided further information on the calculations

Prior to responding, we briefly explain each part of the calculation below.

(i) First, the **nominal cost of new debt** is based on an estimated rate for NR's refinancing. This assumes that NR's current borrowing arrangements continue into CP7. According to NR, the rate it pays to DfT under the current loan agreement is the NLF rate and a 1.5% margin. The NLF rate chosen for NR's submission in the Draft Determination was approximately 4.2%, assuming a 5 year tenor, which translated to a nominal cost of new debt of **around 5.6%** after including the 1.5% margin and accounting for forward expectations of the NLF rate.[16]

(ii) Second, to convert the nominal cost of new debt to a CPIH real cost of new debt, NR has applied an assumption on inflation. The difference between the nominal cost of new debt (approximately 5.6%) and the **CPIH real cost of new debt (3.77%) implies a CPIH inflation assumption of around 1.8%**.

(iii) Third, the **existing cost of debt** is based on an analysis of NR's existing portfolio of debt. This is a combination of:

a. existing index-linked bonds that date to pre-reclassification;[17] and

b. DfT loan facilities in place.

NR calculated the weighted average cost of the index-linked bonds at 1.3% while it calculated the rate on the existing DfT debt to have a real rate of 1%. On a weighted basis, this gives an average cost of existing debt of **1.27%**.[18]

(iv) Fourth, NR calculates the **average proportion of new debt** by calculating the proportion of the debt on their portfolio that needs to be refinanced during the upcoming control period. The entirety of the existing DfT debt needs to be refinanced during CP7 as well as some debt issued before reclassification. After refinancing all the DfT debt and a proportion of the existing debt from before reclassification, NR forecast the proportion of new debt by the end of CP7 to be 63%. However, since all the DfT debt matures midway through 2027-28, the refinancing is not incurred evenly over the

[16] We note that there is a margin of 11 basis points already added in the NLF rate above the gilt par yield curve. In the 2014 loan agreement with DfT, this is removed before adding the 1.5% margin. We are not able to verify if this is still the case in the 2019 agreement, but NR have said that there were no material changes to the terms of the loan agreement in 2019 compared with 2014.

[17] While NR does have some nominal bonds issued pre-reclassification, the volume is small relative to the rest of the portfolio.

[18] While the DfT debt makes up the majority of the existing portfolio at the start of the control period, it matures relatively quickly.

control period. Therefore, NR calculate the average proportion of new debt over CP7 to be **42%**.

Finally, NR combines these parameters to calculate a real (CPIH) cost of debt of 2.33%.

We respond to each element of NR's cost of debt calculation below, beginning with the cost of new debt.

Response on the cost of new debt

As summarised above, the nominal cost of debt estimated by NR is based on the NLF rate and a 1.5% margin.[19] The NLF is administered by HM Treasury to fund the government's lending/borrowing and the rate is set by the Debt Management Office (DMO). The DMO uses current gilt prices to estimate the rates.[20] A margin of 11 basis points is then added.[21]

We understand that NR has used a 5-year tenor when choosing the NLF rate. This appears to be in line with the length of borrowing between NR and DfT since all the existing DfT debt is assumed to be refinanced in the upcoming control period. However, we note that 5 years is a short tenor for infrastructure financing.[22]

The NLF rate used by NR in its submission is 4.2%. NR notes that, at the time of the analysis, the market implied forward premium was broadly flat / slightly negative.[23] Based on further information provided by NR, we understand that this forward premium is the reason the rate, including margin, is 5.6% (rather than 5.7%).[24]

There is, however, **a further adjustment to the NLF rate that we understand NR should have applied, but did not include in the figures provided**. This relates to the **removal of the 11 basis points**, which is added by the DMO when calculating the NLF rate.[25] The 2014 loan agreement between DfT and NR specifically requires that the margin added by the DMO on top of the estimated gilt par yield curve is removed before adding the 1.5% margin.[26] Had NR included this adjustment, the underlying rate used should have been approximately 4.1% (rather than 4.2%). **Producing a figure of 5.5%** once the same forward premium and margin of 1.5% were included.

Since NR's submission, we note that the NLF spot rate for a 5 year loan has increased, but that the market implied forward premium, which captures the expected loan rate during CP7, has only

[19] We note that the 1.5% margin above the government borrowing rate is similar to the margin that you can observe on corporate investment grade bonds and materially higher than the cost of borrowing pre-reclassification

[20] Based on a gilt par yield curve.

[21] DMO Technical Note on Lending Rate Methodology June 2023, available at: https://www.dmo.gov.uk/media/omgadxrg/dmo-technical-note-on-lending-rate-methodology-june-2023_-final.pdf

[22] The average tenor of debt from other regulated utilities in GB is longer-term. For example, Ofwat noted that the average tenor of the bonds in the water industry was around 12.5 years in their Monitoring financial resilience report 2021-2022, available at: https://www.ofwat.gov.uk/wp-content/uploads/2022/12/MFR_2021-22.pdf

[23] This uses the loan rate for different maturities to infer what the interest rate would be for a 5 year period in a few years' time. This is relevant for this determination as debt will be issued over the period rather than at today's rates.

[24] Without adjustment, the 4.2% NLF rate inclusive of the 1.5% margin, would give a 5.7% figure.

[25] This margin should have also been removed from the rate on the existing DfT debt. NR have not provided their underlying calculations on the existing debt so we cannot verify that this is the case.

[26] Facility agreement, The Secretary of State for Transport and NR, July 2014, p5, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/347092/facility-agreement.pdf. NR have confirmed in correspondence that this has not changed in subsequent agreements.

increased marginally from 4.1% to 4.2%. More detail on forward rates are provided in the supporting Frontier Economics report.[27]

In other words, the expected cost of new debt in CP7 has not materially changed from the figures NR provided; with the increase in the forward NLF rate being offset by the removal of the DMO margin. For this reason, **based on up to date market information, the nominal cost of new debt of approximately 5.6% should not change** relative to the figure in the DD.[28]

Response on the cost of existing debt

As noted above, the existing cost of debt is based on an analysis of NR's existing portfolio of debt which is a mostly a combination of existing index-linked bonds that date to pre-reclassification and DfT loan facilities in place. NR does have some nominal bonds issued pre-reclassification but the volume is small relative to the rest of the portfolio.[29]

NR calculated the weighted average cost of the index-linked bonds at 1.3% and calculated the rate on the existing DfT debt to have a real rate of 1.0%. While the DfT debt makes up the majority of the existing portfolio at the start of the control period, it matures relatively quickly. Therefore, on a weighted basis, NR estimated an **average cost of existing debt of 1.27%**.

We do not comment on this parameter, except to note that as it relates to existing debt, **we would not expect the figure to change between draft and final determination**.

Response on the weighting on new debt

NR calculate the average proportion of new debt by estimating the share of their portfolio that needs to be refinanced during CP7. Since NR spending is now funded by a mixture of government grant, access charge and property income, there is no new debt in relation to CP7 expenditure.[30] This means the proportion of new debt is focused on the existing debt which requires re-financing in the period.

NR's forecast of this re-financing requirement is 63% total debt by the end of CP7. However, since all the DfT related debt is assumed to mature midway through 2027-28, the refinancing is not incurred evenly over the control period. As a result, NR estimates the average proportion of new debt for CP7 as 42%.[31]

In response to the DD, we do not propose an alternative figure for the proportion of new debt since this appears to be an accurate reflection of NR's financing needs. However, we note that an average proportion of **new debt of 42% is high relative to other mature infrastructure businesses**. For example, the average proportion of new debt assumed by Ofwat in its PR24

[27] Page 15 of the Frontier report provides evidence on the movements of the NLF rate.
[28] 5.59% is the rate when using an NLF rate of 4.2% and then removing the 11bps DMO margin before adding the 1.5% margin in the agreement with DfT.
[29] According to information provided by NR, nominal bonds make up less than 4% of NR's debt portfolio.
[30] NR provided information setting out that £31.9 billion of the existing DfT debt needs to be refinanced during CP7 as well as £8.1 billion of debt issued before reclassification.
[31] Since NR have not provided details on when their existing debt is due to mature, we cannot verify this estimate with the information that we have.

methodology is 17%, and the proportion of new debt proposed by the CAA in the final H7 decision for Heathrow is 12%. Further examples are set out in the supporting Frontier Economics report.[32]

This relatively high weighting on new debt is a function of how frequently the DfT-related debt is re-financed. This element of NR's debt is effectively short-tenor debt. This is in contrast to the long-tenor debt that is more commonly used for infrastructure assets, and the long-tenor debt NR commonly issued prior to re-classification. The higher weighting on new debt is therefore a function of the specific financing situation in the rail sector following re-classification.

It is also important to note that as pre-reclassification debt matures, this may continue to shorten the average tenor of debt in NR's debt book. This is because NR's debt issued pre-reclassification had a longer tenor than the new DfT debt which appears to have a tenor of around 5 years. This will **further raise the proportion of debt that gets re-financed each control period**. If this occurs, the divergence between NR and other regulated infrastructure will keep widening. And, once all pre-reclassification debt has matured, could lead to a situation where 100% of new debt will be re-financed by the end of each control period.

While this does reflect how NR is currently financed, it has the impact of increasing the volatility of the CSAC between periods. We discuss this further in the 'Future of the CSAC' section. This specific feature of rail sector financing also means that comparisons to other decisions on the cost of debt (by other regulators in the UKRN) have limited relevance.

Response on inflation

CPIH inflation assumption

From the figures that NR provided, it has **used an inflation (CPIH) assumption of around 1.8%** to deflate the nominal cost of debt (~5.6%) to a cost of debt in CPIH real terms (3.77%). Given that inflation expectations may have changed since NR undertook its analysis we have reviewed more recent data.

HM Treasury, in May 2023[33], provided a collection of independent medium-term forecasts of inflation which covered the 2023-2027 period.[34] The average of the ten CPI forecasts from May 2023 is shown in the first row of the table below[35]. This suggests that, on average, the independent forecasters expect inflation to fall from around 7% in 2023, to around 2% by 2025 and then remain at that level.[36]

We consider that the most relevant measure of inflation for the CSAC is 5-year inflation expectations at the time that the debt is issued. This is because of NR's assumption that the DfT debt has a tenor of around 5 years – meaning a 5 year forward looking estimate will account for

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[32] Page 30 of the Frontier report.
[33] At the time of writing, May 2023 is the latest collection of medium term forecasts collected by HM Treasury. These are usually updated once per quarter.
[34] This uses data from 10 independent forecasts from May 2023 available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1157160/_Independent_Forecasts_for_the_UK_Economy___May_2023.pdf. CPI is assumed to return to the Bank of England's 2% target after the end of the forecasts (from 2028). Please see the supporting Frontier Economics report for more detail.
[35] We note the mean and median figures were similar, showing the mean is not sensitive to outliers.
[36] These forecasts are using CPI rather than CPIH but we note that historically there has been a negligible difference between the two indices when inflation is at relatively normal levels as shown on page 46 of the Frontier report.

inflation expectations over the life of the debt. This forward-looking 5-year figure is likely to change over time as inflation falls from the current peak.[37]

The second row in the table below shows estimates of the forward looking 5-year CPI inflation rate starting from 2023.[38] This shows that the forward-looking rate is expected to be slightly above 2% at the start of CP7 and then remains close to 2% over time.[39]

Table 3 – Summary of CPI inflation forecasts by calendar year

	2023	2024	2025	2026	2027
Average for each year	6.81%	2.92%	1.96%	2.07%	2.09%
Implied 5 year inflation average	3.17%	2.21%	2.02%	2.03%	2.02%

Source: Frontier Economics analysis of data collected by HM Treasury.

Based on this analysis, **we consider that a CPIH inflation rate of 2% inflation is appropriate** for deflating the nominal cost of new debt into CPIH real terms to reflect updated market expectations.

RPI-CPIH wedge assumption

As previously set out, the RoR in the CSAC is an RPI real cost of debt. Therefore, in addition to reviewing the CPIH inflation assumption, we also review recent data regarding the inflation wedge between CPIH and RPI – which needs to be applied to convert the cost of debt into RPI real terms.

While there is an inflation wedge provided in the draft determination, we note that this is not applied in the cost of debt section. The RPI-CPIH wedge of 0.54% was used in the calculation of the risk-free rate and originates from analysis done by Ofwat in their PR24 final methodology.[40] However, this wedge is calculated using 20-year data. This is not an appropriate wedge to use for the cost of debt in this case since the DfT debt has a much shorter tenor of around 5 years.

This difference in tenor is likely to have a significant impact on the wedge due to the upcoming reform of RPI in 2030. This is explained further in page 22 of the Frontier report. We note that the table in Ofwat's final methodology referenced by ORR also includes estimates for shorter time horizons such as 0.99% for a 10 year wedge.[41]

[37] To estimate the forward looking 5 year CPIH inflation rate, inflation forecasts up to 5 years after the debt is issued is required. Given that these forecasts expect inflation to return to the Bank of England's target of 2% by the end of their forecasts, we have assumed inflation remains at 2% after 2027. More detail is provided on page 20 of the Frontier report.
[38] This is a combination of the forecast rates up to 2027 and the 2% assumption thereafter.
[39] Since the forecasts collected by HM Treasury end in 2027, the inflation rate and the 5 year expectations can be expected to be 2%, which is also in line with the Bank of England target.
[40] Table 3.3 in PR24 final methodology, available at: https://www.ofwat.gov.uk/wp-content/uploads/2022/12/PR24_final_methodology_Appendix_11_Allowed_return.pdf
[41] Table 3.3 in PR24 final methodology, available at: https://www.ofwat.gov.uk/wp-content/uploads/2022/12/PR24_final_methodology_Appendix_11_Allowed_return.pdf

According to the independent medium term forecasts collated by HM Treasury, in May 2023 the average RPI-CPI wedge for each year varies between 0.69-1.24% over the years 2024 to 2027.[42]

As with the CPIH rate, the most relevant measure of the inflation wedge for the CSAC is the 5 year expectation since the DfT debt is assumed to have a tenor of around 5 years. Combining the average from the forecasts with a long-run wedge assumption of 1% from the OBR [43] (for 2028 onwards) suggests that **the RPI-CPIH wedge for debt of a 5 year tenor should range from around 0.75% to 0.95%.**[44]

Debt issued at the end of the period may tend to have a lower wedge due to the reform of the RPI methodology in 2030 since a greater proportion of the 5 year tenor will be after 2030 when the wedge is zero. However, as discussed in the section above, the majority of debt is assumed to be issued earlier in the upcoming Control Period.[45]

Table 4 – Summary of inflation wedge forecasts

	2023	2024	2025	2026	2027
Average for each year	2.32%	0.98%	0.69%	0.84%	1.24%
Implied 5 year wedge average	1.21%	0.95%	0.95%	0.92%	0.75%

Source: Frontier analysis of data collected by HM Treasury

TfL conclusion on cost of debt

Having reviewed the latest evidence since NR conducted their analysis, we find that:

- Forward rates suggest that the NLF rate is almost unchanged from the figures NR proposed for DD; and
- The NLF rate should have 11bps deduced to reflect the terms of DfT's loan agreements with NR.

Together, these findings produce to a **nominal cost of new debt of approximately 5.6%.**[46]

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[42] These forecasts are using CPI rather than CPIH but we note that historically there has been a negligible difference between the two indices when inflation is at relatively normal levels as shown on page 46 of the Frontier report.
[43] Revised assumption for the long-run wedge between RPI and CPI inflation, OBR, available at: https://obr.uk/box/revised-assumption-for-the-long-run-wedge-between-rpi-and-cpi-inflation/#:~:text=Summing%20the%20contributions%20gives%20our,estimate%20of%201.3%20percentage%20points
[44] More detail on the methodology for the wedge can be found on pages 23 and 24 of the Frontier report.
[45] We do not present a wedge after 2027 since that is the end of the forecasts collected by HM Treasury. The forward looking wedge will depend on the assumed wedge before 2030 and the exact date of the reform of the RPI methodology.
[46] Based on a 4.2% NLF rate (supported by forward analysis), an 11bps deduction for the DMO margin, and the addition of the 1.5% margin as per the terms of the DfT agreement with NR.

Regarding inflation, we find that a **CPIH inflation rate assumption of approximately 2%** for CP7 is supported by recent market data. And while we note the degree of uncertainty regarding the **RPI-CPIH wedge**, a **range of 0.75% to 0.95%** is supported by recent evidence.

These changes are summarised in the table below.

Table 5 – TfL summary of NR's cost of debt calculations and alternative estimates

	Step	NR/ORR	TfL	Notes
Nominal cost of new debt	A	5.6%	5.59%	TfL figure based on NLF forward rate of 4.2% plus a 1.5% margin, net of 11bps.
Real cost of new debt	B	3.77%	3.52%	Implied CPIH inflation of approximately 1.8% for NR and 2.0% for TfL.
Real cost of existing debt	C	1.27%	1.27%	NR figure based on index-linked bonds issued pre-reclassification and existing DfT debt.
Proportion of new debt	D	42%	42%	Proportion of new debt driven by refinancing of all existing DfT debt in CP7.
Overall real (CPIH) cost of debt	E = D*B + (1-D)*C	2.33%	2.21%	Calculated.
Overall real (RPI) cost of debt	F	N/A	1.26% - 1.46%	No inflation wedge included in the DD for the cost of debt. TfL apply a wedge of between 0.75-0.95%.

Note: Summary of NR/ORR estimate is based on correspondence with NR where it provided further information on the calculations

Our suggested changes lead to an updated overall real (CPIH) cost of debt of 2.21%. When combined with out estimate of the RPI-CPIH inflation wedge, we arrive at an estimate for the **overall real cost of debt in RPI terms of 1.26% to 1.46%.**

Future of the CSAC

In this section we discuss the future of the CSAC. TfL believe that there are several drawbacks with the current functioning of the CSAC. For these reasons, TfL is keen to engage with the DfT, ORR and NR on ways in which the charge can be improved.

Development of the CSAC

The CTAO, which determines the CSAC, was originally dated 22 September 2008. At this date the agreement was between NR and DfT.[47] The CTAO was subsequently novated to TfL (from DfT) in 2014.

Since 2008 there have been a number of key changes to the financing of the GB rail industry. Namely, NR is no longer a Company Limited by Guarantee (CLG). In 2014 NR was reclassified as an arms-length body (ALB). As a result, NR no longer borrows in its own right, with the UK government providing finance directly to NR through loan agreements. There have also been associated changes in the way NR is regulated by the ORR through the periodic review process.

Now 15 years have passed since the CSAC was initially agreed, and given these significant changes that have occurred in the intervening period, TfL believe there are several reasons to consider the future of the charge. These are set out in more detail below.

Reasons to consider the future of the CSAC

There are three key reasons to consider the future of the charge:

First, there have been significant changes to NR's financing - as set out above, the way in which NR is financed has changed significantly since the charge was developed. In particular, we note that the new financing NR receives is:

i. Re-financed on average much more rapidly – pre-reclassification NR's debt book, which is mostly comprised index-linked bonds, had a long-term average tenor. Meaning that it took multiple control periods for the majority of bonds to be re-financed. The introduction of financing through DfT loan agreements has shortened the average tenor of debt substantially. Now, the majority of debt is re-financed over the course of a single control period. Moreover, as the pre-reclassification debt book continues to decline in value, this will further exacerbate the shortening of the average tenor.

ii. Debt management less within NR's control – the terms of NR's financing are now defined through the DfT loan agreements, meaning NR has less ability to influence cost, repayment structure, or other features of borrowing (such as currency).

The changes to NR financing now means that the CSAC is an **additional regulatory burden**. The cost of debt estimate, which is used to set the RoR parameter in the CSAC, is not specifically

47 Specifically, Network Rail Infrastructure Limited and The Secretary of State for Transport.

required for any other element of NR's revenues.[48] When the CSAC was developed there were greater synergies with NR's regulatory framework, but this is no longer the case. Meaning it is an incremental regulatory requirement. Therefore, there may be ways in which the regulatory burden could be reduced going forward.[49]

Second, there has been an increase in macroeconomic volatility since the CTAO was agreed. The CSAC is a function of both inflation and the RoR parameter (based on real interest rates). Both inflation and real interest rates have exhibited greater volatility since 2008 when compared to the years prior. This has reduced the predictability and stability of the charge. This evidence regarding greater volatility is covered in the supporting Frontier Economics report.

This increased uncertainty has **created challenges for TfL's planning**. TfL only know the level of the charge when it is determined just a few months before the new financial year. Therefore we must plan for the year ahead with this increased uncertainty over the funds available for other projects. This makes budgeting a challenge. **A one percentage point change in the RoR parameter leads to a change in the annual charge of approximately £15m (2022/23 prices), this is equivalent to around £70m (2022/23 prices) over CP7**.[50] TfL, considers that this volatility is contradictory to the ORR duty of allowing parties to, *"plan the future of their businesses with a reasonable degree of assurance."* [51] We note there is a corresponding budgeting uncertainty for NR too.

Finally, the charge exposes London farepayers to market volatility and disproportionate level of market risk. The CSAC can vary substantially between control periods, and the degree of variability may increase further over time. This exposes London farepayers to a high degree of cost variation that is not reflective of the benefits received. This is also not consistent with other access charges on Network Rail's network.[52]

There are some important interactions within and between these three factors. We note that the way that NR is currently financed leads to a proportion of new debt which is higher than in other industries. If the funding arrangements remain similar, the proportion of new debt will increase further over time as the existing debt pre-reclassification is refinanced. This has the impact of potentially increasing the volatility of the charge between periods. This compounds the planning and budgeting uncertainty. In the context of infrastructure assets (such as those enhanced through the ONW), it is unusual to have such a high degree of uncertainty over financing costs. Arguably this uncertainty is not what was envisaged for the CSAC when the original CTAO was developed.

Another example of an interaction is between the changes to NR's financing and the regulatory burden. When the CSAC was developed, the ORR's estimate of the cost of debt and WACC was a

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[48] ORR PR23 Draft Determination, "we do not consider that a weighted cost of capital (WACC) or cost of debt are necessary components to determine revenue requirements, track access charges or network grant levels for CP7."
[49] The Better Regulation Framework, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/916918/better-regulation-guidance.pdf suggests that a post-implementation review should be undertaken "to assess if the objectives of the regulation have been achieved…and if they could be **achieved in a less burdensome way**" (emphasis added)
[50] Using OBR March 2023 forecast of RPI rate. 2022/23 RPI prices.
[51] ORR, 2017, Our rail and road duties, available at: https://www.orr.gov.uk/about/how-we-work/strategy-duties/law-and-our-duties
[52] We also note that Network Rail's overall cost of debt is associated with financing of the wider rail network. NR's total debt is approximately £60bn, whereas the SAC balance is around £2bn.

much more significant part of NR's price control.[53] As such it was reasonable to anticipate that this parameter would continue to be estimated routinely, and the CSAC RoR would simply utilise a figure which was required regardless. Now, given the change of focus, the CSAC is creating additional regulatory requirements.

For these reasons, TfL finds it appropriate to consider the future of the CSAC, and would like to request further engagement with ORR, NR and DfT on this issue and potential options for reform which we have developed and assessed.

[53] Given the role the Regulatory Asset Base (RAB) played prior to re-classification.

EVERY JOURNEY MATTERS

Supporting analysis to TfL's consultation response on the CSAC

August 2023

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Purpose and overview of this document

- Frontier Economics has been asked by TfL to review the Office of Rail and Road's ("ORR") proposed Rate of Return ("RoR") to be used in the Crossrail Supplementary Access Charge ("CSAC") for CP7.
- Key evidence which informed the ORR's PR23 Draft Determination ("DD") decision on the RoR was provided to us by Network Rail (NR). Specifically, this evidence related to NR's estimated cost of debt for CP7.
- In reviewing the evidence, we have used information provided by ORR in the DD as well as additional information provided by NR in correspondence with Transport for London ("TfL").
- The assumptions and projections within ORR's cost of debt estimation largely relate to the cost of new debt. The cost of new debt is also a parameter subject to changes in market conditions. For this reason, the cost of new debt estimate is the focus of our review. This includes reviewing the cost of nominal debt, and the inflation assumptions that are applied when deflating to real terms.
- On pages 5 and 6 below we provide context to the RoR and the CSAC, and on page 7 we set out our key findings in relation to the cost of debt. More detail on our analysis can be found in the next section.
- We have also supported TfL in reviewing arguments associated with reform of the CSAC. More detail on this can be found in Section 3.

Context – the RoR used in the CSAC

- The construction of Crossrail (now known as the Elizabeth Line) involved a significant number of enhancements. The works undertaken by NR are referred to as On Network Works (“ONW”). These works included enhancements to NR’s infrastructure such as the electrification of the route between Maidenhead and Airport Junction, and new twin track from Plumstead to Abbey Wood.
- The costs of the ONW were financed by NR. To recover these costs, NR charges the CSAC. Under the Track Access Agreement (“TAA”), TfL (as holder of the Crossrail Track Access Option (“CTAO”)) is responsible for paying NR the CSAC. The CSAC is paid in addition to other fixed and variable track access charges.
- The annual charge[1] is defined as: $CSAC = \frac{OB \times RoR}{1-(1+RoR)^{-RL}}$

  RoR = Rate of Return in the relevant year;
  OB = Opening Balance of SAC in the relevant year; and
  RL = Remaining Life in the relevant year.
- The “OB” figure tracks the outstanding balance associated with the ONW enhancements over time. This balance is inflation linked (to RPI). Given the formula above, a key component of the CSAC is the rate of return (RoR).
- The RoR value is determined as part of NR’s 5 year periodic review by the ORR. The current periodic review is for CP7 which runs from 1st April 2024 to 31 March 2029. The real cost of debt is calculated solely for the purposes of the CSAC and is not used to inform any other charges on the GB rail network. The real cost of debt, along with the CSAC, is expected to be updated at CP7 Final Determination (FD).
- To estimate the RoR, NR has estimated the actual cost of finance that it incurs. The way NR finances expenditure has changed over time which has implications for the cost of debt. We explain these changes on the next slide.

1: This is defined as the Whole Year Payment Amount (“WYPA”) in the CTAO

Context – since reclassification, NR no longer issues its own debt; financing provided under DfT loan facilities has grown over time as NR's legacy stock of bonds matures

- Since the CTAO was signed in 2008, NR has been reclassified as a Government Body by the ONS with effect from September 2014.[1]
- Prior to reclassification, NR issued its own debt with a guarantee from the UK government. Since reclassification, its financing arrangements have changed significantly (see diagram below for further detail).
- Currently, NR spending is funded by government grant, fixed and variable track access charges and income from third parties. However, NR has an outstanding debt stock issued prior to reclassification. Where this legacy debt needs refinancing, it is financed through a loan agreement between NR and DfT. This was originally a facility arranged to support the financing of CP5 and has subsequently been rolled forward for CP6 and CP7. Over time, this means debt issued prior to reclassification is replaced by debt under the DfT loan facility. Our understanding is that the refinancing of this loan facility is concentrated in the first half of CP7.
- The agreement with DfT means that NR no longer influences the form of its borrowing, and there is a specified rate at which it borrows. Prior to reclassification, NR issued debt in multiple currencies and had a mix of coupon types.

Figure 1: Timeline of NR financing and the Crossrail Track Access Option

1: Network Rail, https://www.networkrail.co.uk/industry-and-commercial/third-party-investors/debt-investor-relations/information-for-investors/what-reclassification-means-for-investors/
2: According to Bloomberg data

Key findings – our analysis suggests some adjustments should be made to the cost of debt estimate – producing an overall RPI real cost of debt of 1.26-1.46% (1 of 2)

- We find that the figures in the DD require some important adjustments, these are set out below.

A. **Updating for loan market movements** – the latest market data shows the nominal terms cost of new debt estimate has slightly increased. The impact of this is a small increase on the figure from the ORR's DD cost of debt.

B. **Deducting the DMO margin** – this was a step which was absent from the figures in the DD. Including this value, as per the loan agreement between DfT and NR, results in small decrease to the cost of debt.

C. **Updating for CPIH inflation** – the latest inflation forecasts suggest a CPIH inflation rate of 2.0%. This is a higher inflation rate than that assumed in the DD, reducing the CPIH real cost of debt when deflating from nominal terms.

Figure 2: Changes to DD figure for the cost of debt

Source: Network Rail and Frontier calculations
Note: Numbers may not sum to the totals due to rounding

Key findings – our analysis suggests some adjustments should be made to the cost of debt estimate – producing an overall RPI real cost of debt of 1.26-1.46% (2 of 2)

- **D.** **Real (CPIH) cost of debt** – combining steps A to C produces a real (CPIH) cost of debt figure of 2.21%.
- **E.** **RPI-CPIH wedge** – the DD did not contain a real cost of debt in RPI terms, however, a value expressed on an RPI-deflated basis is required for the CSAC. We have therefore applied an RPI-CPIH wedge to adjust the real (CPIH) cost of debt to a real (RPI) cost of debt. Using the latest forecasts suggest a wedge of around 0.75% to 0.95%. We have shown the mid-point of this range (0.85%) in Figure 2 opposite.
- **F.** **Real (RPI) cost of debt –** applying the wedge from step E, we calculate a real (RPI) cost of debt of 1.26% to 1.46% for the CP7 RoR, the mid-point of which (1.36%) is shown opposite.[1]

Figure 2: Changes to DD figure for the cost of debt

Source: Network Rail and Frontier calculations
Note: Numbers may not sum to the totals due to rounding

1: We have not made any adjustments to the estimates of the proportion of new debt or the cost of existing debt.

Structure of the remainder of this document

- The remainder of this document has two main sections:
  - **Review of the DD RoR –** this section provides analysis on the proposed figures used to calculate the RoR in the draft determination and our proposed changes to those figures.
  - **Reform of the CSAC** – this section sets out potential arguments for reforming the CSAC in future, providing supporting evidence for each argument.
- There are also two annexes with additional detail supporting the analysis.

Contents

Summary of NR's approach to estimating the CP7 cost of debt

- The ORR's DD adopted the figure proposed by NR for the CPIH real cost of debt (2.33%). Following the DD, NR provided TfL with some further information on the calculation of its cost of debt. We summarise the figures reviewed by the ORR in the table opposite, and in the "notes" column include some of the information provided by NR on how these figures were estimated.
- NR's approach be **separated into four parts**:
  i. the nominal cost of new debt estimate;
  ii. the real cost of new debt estimate;
  iii. the real cost of existing debt estimate; and
  iv. the proportion of new debt.
- In the following slides, we explain each step in more detail, review the latest evidence and propose an updated estimate for the PR23 FD based on recent data and corrected errors. We also provide a view on the RPI real cost of debt, as a figure on this basis is required for the CSAC calculation.

Table 1: NR cost of debt estimate

	Step	Rate	Notes
Nominal cost of new debt	A	5.6%	Estimate based on a forward view of the DMO's National Loan Funds ("NLF") rate plus a 1.5% margin.
CPIH real cost of new debt	B = (1+A) / (1+CPIH%)	3.77%	Given the 5.6% nominal cost of debt, this implies a CPIH inflation estimate of approximately 1.8%.
CPIH real cost of existing debt	C	1.27%	Mostly based on index-linked bonds, which make up more than 90% of existing debt.
Proportion of new debt	D	42%	Proportion of new debt driven by refinancing of all existing DfT debt in the next regulatory period.
Overall CPIH real cost of debt	E = D*B + (1-D)*C	2.33%	Calculated.

Source: ORR, Network Rail

We have looked at each of the four parts of NR's approach to estimating the overall cost of debt

The four parts

Nominal cost of new debt estimate

Real cost of new debt estimate

Real cost of existing debt estimate

Proportion of new debt estimate

Nominal cost of new debt estimate

Nominal cost of new debt estimate

Real cost of new debt estimate

Real cost of existing debt estimate

Proportion of new debt estimate

In the following slides we cover:

- An overview of NR's approach to the nominal cost of new debt
- An analysis of current market data on the NLF rate
- The Debt Management Office (DMO) margin added to the NLF that needs to be removed

NR's approach to the nominal cost of new debt is to project what the NLF rate will be during the next regulatory period and then add the margin from the DfT loan facility

- The **nominal cost of new debt** proposed by NR is based on an estimated rate for NR's refinancing. This assumes that NR's current borrowing arrangements continue into CP7. The loan facility from DfT accounts for the substantial majority of NR's new debt in CP7 and the refinancing of that loan facility is, we understand from NR, concentrated in the first half of the price control period, we therefore focus the analysis of the cost of new debt on this time period.
- According to NR, the rate it pays to DfT under the current loan agreement is the NLF rate plus a 1.5% margin.[1] We understand from NR that the NLF spot rate at the time of NR's analysis was approximately 4.2%, assuming a 5 year tenor. However, NR's estimates also took into account potential changes to that spot rate over time. NR note that at the time of the analysis, the market implied forward premium was broadly flat / slightly negative.
- Based on this further information provided by NR, we assume that the forward NLF rate they applied was therefore around 4.1%; as this is the figure that produces a nominal cost of new debt of 5.6% when the 1.5% margin is added.

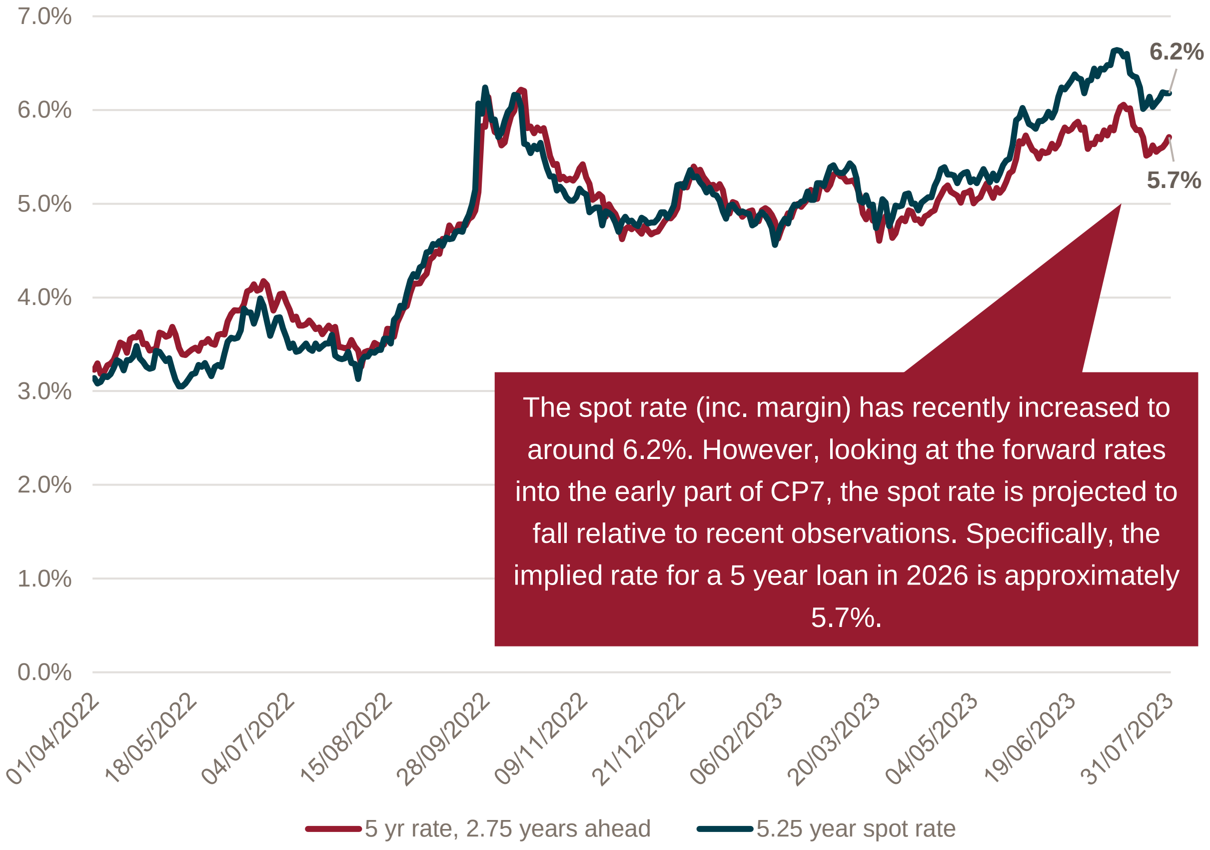
$$NR's\ nominal\ cost\ of\ new\ debt = NLF\ forward\ rate + DfT\ loan\ agreement\ margin = 4.1\% + 1.5\% = \mathbf{5.6}\%$$

1: Based on TfL correspondence with NR.

The nominal rate of new debt has increased since NR's estimate, but the forward rate over CP7 is comparable

- NR say that it used the NLF rate with a 5 year tenor - which we interpret to mean the rate of loans between 5 and 5.5 years. This is shown by the **blue** line on the right.
- Since NR did its analysis, the spot rate has increased to 6.2% (from 5.7%). However the forward rate, the figure NR ultimately used in its analysis, has increased to a lesser extent.
- **We estimate a forward rate towards the earlier part CP7 of around 5.7%** - see the **red** line. 0.1% higher than the figure implied from NR's cost of new debt analysis.
- Specifically, we estimate 5.7% as the implied rate for a 5 year loan in 2.75 years time (see Annex B for details). This is what the market expects for a loan closer to the time at which the debt is due to be refinanced.
- This is more relevant for the price control than todays 5.25 year rate (the **blue** line) as the cost of new debt is designed to estimate the cost for debt issued during the upcoming Control Period rather than the cost at today's rates.

Figure 3: NLF rates inclusive of a 1.5% margin



Source: Frontier analysis of the NLF rate
Notes: Latest figures for 31 July 2023; this rate includes the additional 1.5% margin in the Facility agreement with DfT

NR should have deducted the 11 basis point margin added by the DMO to the NLF loan rate

- There is, however, **a further adjustment to the NLF rate that we understand NR should have applied, but did not include in the figures provided to the ORR**.
- To calculate the NLF rate, the DMO adds a margin of 0.11% to the estimated gilt par yield curve.[1]
- The 2014 loan agreement between NR and DfT states that the NLF rate used should be "*the national loan funds new loans rate under the heading "maturity"…**after the deduction of the margin added by DMO** (0.11 per cent. as at the date of this Agreement)*"[2] (emphasis added). We understand from information provided by NR that subsequent agreements contain the same terms.
- Therefore, in the FD, for the calculation of the RoR to be consistent with the underlying agreement between NR and the DfT, there should be an adjustment to the cost of new debt to remove the margin added to the NLF rate added by the DMO.
- This adjustment of 0.11% to the nominal cost of new debt offsets the 0.1% increase in the NLF rate since NR's analysis. Therefore, **we propose a nominal cost of new debt of 5.59%** which is very similar to NR's proposed figure of 5.6%.

$$Nominal\ cost\ of\ new\ debt = NLF\ forward\ rate + DfT\ loan\ agreement\ margin - \mathbf{DMO\ margin} = 4.2\% + 1.5\% - 0.11\% = \mathbf{5.59}\%$$

1: Technical note calculation of interest rates on PWLB and NLF fixed rate loans and PWLF variable rate loans, June 2023, available at: https://www.dmo.gov.uk/media/omgadxrg/dmo-technical-note-on-lending-rate-methodology-june-2023_-final.pdf
2: Facility agreement between The Secretary of State for Transport as Lender and Network Rail Infrastructure Limited as Borrower, July 2014, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/347092/facility-agreement.pdf

Real cost of new debt estimate

- Nominal cost of new debt estimate
- **Real cost of new debt estimate**
- Real cost of existing debt estimate
- Proportion of new debt estimate

In the following slides we cover:

- An overview of NR’s approach to deflating the nominal cost of new debt
- An analysis of current forecasts of CPI
- An analysis of the CPIH/RPI inflation wedge

NR’s analysis implies a CPIH inflation assumption of around 1.8%

- To convert the nominal cost of new debt to a CPIH real cost of new debt, NR has applied an assumption on inflation. The difference between the nominal cost of new debt (approximately 5.6%) and the CPIH real cost of new debt (3.77%) implies **a CPIH inflation assumption of around 1.8%**.
- The RoR in the CSAC is an RPI real cost of debt. Therefore, in addition to the CPIH inflation assumption, there will need to be an assumption on the RPI-CPIH wedge to convert the CPIH real cost of debt to an RPI real figure.
- We note that there was an inflation wedge figure provided in the DD but that this is not applied in the cost of debt section. The RPI-CPIH wedge of 0.54% was used in the calculation of the risk free rate[1] and originates from analysis done by Ofwat in its PR24 final methodology.[2]

1: PR23 draft determination: policy position – financial framework, ORR, available at: https://www.orr.gov.uk/sites/default/files/2023-06/18-pr23-draft-determination-policy-position-financial-framework.pdf
2: Table 3.3 in PR24 final methodology, available at: https://www.ofwat.gov.uk/wp-content/uploads/2022/12/PR24_final_methodology_Appendix_11_Allowed_return.pdf

The latest inflation forecasts project CPI falling to 2% by 2025 and stabilising at that level

- HM Treasury, in May 2023, provided a collection of independent medium term forecasts of inflation which covered the 2023-2027 period.
- In the table opposite, we show the 10 CPI forecasts from May 2023. We use CPI forecasts rather than CPIH since they are more readily available and analysis of historical data shows that the CPI-CPIH wedge has been just -0.01% when CPIH is below 5% (as is currently projected for CP7). See Annex A for more details.
- These forecasts show that, on average, forecasters expect CPI to fall from its current peak down to around 2% by 2025. This is higher than the OBR's March 2023 forecast which expected CPI to fall to 0.1% in 2025 before increasing. This potentially reflects the updated inflation expectations in the months since that forecast.
- For the forecasts that end before 2027, we have applied an value of 2% (see grey italic entries) which is in line with the Bank of England's inflation target. The forecasters that provide figures for these years, on average, expect inflation to remain slightly above the 2% target.[1]

Table 2: May 2023 CPI forecasts collected by HM Treasury

	2023	2024	2025	2026	2027
Capital Economics	6.80%	1.80%	1.10%	2.00%	2.00%
Natwest Markets	6.70%	2.80%	1.90%	*2.00%*	*2.00%*
UBS	6.50%	2.30%	2.00%	2.00%	*2.00%*
Beacon Economic Forecasting	7.50%	4.60%	3.80%	3.30%	3.00%
CEBR	7.10%	3.30%	2.60%	2.30%	2.10%
Experian Economics	7.00%	2.40%	1.60%	1.70%	2.00%
ITEM Club	6.20%	2.50%	1.80%	2.00%	*2.00%*
Liverpool Macro Research	6.40%	3.20%	2.00%	2.00%	2.00%
NIESR	7.40%	3.90%	1.90%	2.50%	*2.00%*
Oxford Economics	6.50%	2.40%	0.90%	0.90%	1.80%
Average	**6.81%**	**2.92%**	**1.96%**	**2.07%**	**2.09%**

Source: HM Treasury, May 2023

Notes: We have used the forecasts from May only, grey figures are those added by Frontier and are not attributable to the forecasters listed.

1: The average forecast in 2027 is increased by the high forecast from Beacon Economic forecasting. However, the median forecast is 2.0% which is in line with our assumption.

The forecasts show that 5 year inflation expectations are close to 2% across the upcoming Control Period

- We consider that the most relevant measure of inflation for the CSAC is 5 year inflation expectations at the time that the debt is issued. This is because of NR's assumption that the DfT debt has a tenor of around 5 years; meaning a 5 year forward looking estimate will account for inflation expectations over the life of the debt.
- To estimate the forward looking 5 year CPIH inflation rate, inflation forecasts up to 5 years after the debt is issued are required. Given that several forecasts expect inflation will approximately return to the Bank of England's target of 2% by the end of their forecasts, we have assumed inflation remains at 2% after 2027.
- The table opposite shows that, on average, the forward looking rate is expected to be slightly over 2% at the start of CP7 and **remains close to 2% over time**. Moreover, the analysis shows that **in many cases the projected 5 year rate is higher than the 1.8% used in NR's analysis**.
- We assume that the 5 year expected inflation rate for 2028 onwards, covering the latter part of CP7 (not shown in the table opposite), is also close to 2% - in line with the Bank of England target.

Table 3: Frontier calculation of the 5 year rate based on May forecasts

	2023	2024	2025	2026	2027
Capital Economics	2.74%	1.78%	1.82%	2.00%	2.00%
Natwest Markets	3.08%	2.14%	1.98%	2.00%	2.00%
UBS	2.96%	2.06%	2.00%	2.00%	2.00%
Beacon Economic Forecasting	4.44%	3.34%	2.82%	2.46%	2.20%
CEBR	3.48%	2.46%	2.20%	2.08%	2.02%
Experian Economics	2.94%	1.94%	1.86%	1.94%	2.00%
ITEM Club	2.90%	2.06%	1.96%	2.00%	2.00%
Liverpool Macro Research	3.12%	2.24%	2.00%	2.00%	2.00%
NIESR	3.54%	2.46%	2.08%	2.10%	2.00%
Oxford Economics	2.50%	1.60%	1.52%	1.74%	1.96%
Average	**3.17%**	**2.21%**	**2.02%**	**2.03%**	**2.02%**

Above NR's 1.8% estimate | Below NR's 1.8% estimate

Source: Frontier calculations based on forecasts collected by HM Treasury
Notes: Assumes 2.0% for years beyond the last annual forecast provided to HMT.

Using a higher estimate of the CPIH inflation rate has a direct impact on the CPIH real cost of new debt

- The rate of CPIH inflation is relevant for the calculation of the CPIH real cost of debt.
- This is calculated using the Fisher equation:

$$CPIH\ real\ cost\ of\ new\ debt = \frac{(1 + nominal\ cost\ of\ new\ debt)}{(1 + rate\ of\ CPIH\ inflation)} - 1$$

- Given the nominal cost of new debt estimate of 5.59%, and a CPIH assumption of 2.0%, this produces a figure for the **CPIH real cost of new debt of 3.52%:**

$$CPIH\ real\ cost\ of\ new\ debt = \frac{(1 + 5.59\%)}{(1 + 2.0\%)} - 1 = \mathbf{3.52}\%$$

The inflation wedge used to convert the real cost of debt into RPI terms should match the shorter tenor of DfT debt

- As previously set out, the RoR in the CSAC is an RPI real cost of debt. Therefore, in addition to reviewing the CPIH inflation assumption, we also review recent data regarding the inflation wedge between CPIH and RPI – which needs to be applied to convert the cost of debt into RPI real terms.
- The RPI-CPIH wedge of 0.54% in the DD was used in the calculation of the risk free rate and originates from analysis done by Ofwat in its PR24 final methodology. However, this wedge is calculated based on a 20 year horizon. This is not an appropriate wedge to use for the cost of debt in this case since the tenor of DfT debt assumed by NR is much shorter at around 5 years.
- This difference in tenor is likely to have a significant impact on the wedge due to the upcoming reform of RPI in 2030. The reform, which is scheduled to take place at some point in 2030, will replace the RPI sources and methodology with the CPIH sources and methodology.[1] Therefore, once the reform is embedded, the RPI-CPIH wedge will be zero.
- This means a 20-year horizon will capture many years of zero wedge, and a shorter horizon will capture fewer of these zero years. This is shown by Ofwat's analysis, which also provides an estimate for the 10 and 15 year wedge. As shown, these estimates are higher than the 20-year estimate of 0.54% referenced by the ORR.

Table 3.3: Long-term RPI-CPI wedge estimates under the two approaches

Time horizon	RPI-CPI wedge - 'Official forecast' approach	RPI-CPI wedge - 'Inflation swaps' approach	Discrepancy ('Official forecast' minus 'Inflation swaps')	Average of 'Official forecasts' and 'Inflation swaps' approaches
10-years	1.11%	0.86%	0.25%	0.99%
15-years	0.74%	0.60%	0.14%	0.67%
20-years	0.55%	0.52%	0.03%	0.54%

Source: Table 3.3 in Appendix 11 of the PR24 final methodology

1: HMT, A consultation on the Reform to Retail Prices Index (RPI) Methodology, Sep 2022, available at: https://www.gov.uk/government/consultations/a-consultation-on-the-reform-to-retail-prices-index-rpi-methodology

There is currently uncertainty around the CPI-RPI inflation wedge as reflected by independent forecasts, but this reduces over time

- To understand expectations for the RPI-CPIH wedge, we have again reviewed the latest forecasts on the RPI-CPI wedge collected by HM Treasury from May 2023.[1]
- These forecasts project the average annual CPI-RPI wedge to vary between 0.69-0.98% between 2024-2027. This is lower than the OBR's long run estimate for the inflation wedge which is 1%.[2]
- The figures also capture uncertainty. For example, in 2023, the estimates of the annual wedge vary from +5.7% to -2.7%, a range of 8.4%. While annual estimates for 2025 onwards have a smaller range, the range (highest net of lowest) still varies from 1.5% to 2.3%.
- Some of this uncertainty relates to expected changes in interest rates. While CPI does not include mortgage interest payments, they are included in RPI. Future volatility in the base rate and its impact on mortgage rates could therefore lead to volatility in the CPI-RPI wedge.

Table 4: Inflation wedge May forecasts collected by HM Treasury

	2023	2024	2025	2026	2027
Capital Economics	2.60%	-0.10%	-0.70%	N/A	N/A
Natwest Markets	2.90%	2.20%	1.40%	N/A	N/A
UBS	2.70%	1.30%	1.40%	N/A	N/A
Beacon Economic Forecasting	1.80%	0.30%	0.20%	0.80%	1.30%
CEBR	-2.70%	0.60%	1.60%	1.70%	2.30%
Experian Economics	1.80%	0.90%	1.20%	1.20%	0.90%
ITEM Club	2.80%	-0.40%	-0.60%	0.20%	N/A
Liverpool Macro Research	2.90%	1.40%	0.80%	0.50%	0.50%
NIESR	5.70%	2.40%	0.90%	0.60%	N/A
Oxford Economics	2.70%	1.20%	0.70%	0.90%	1.20%
Average	**2.32%**	**0.98%**	**0.69%**	**0.84%**	**0.89%**
Range	**8.40%**	**2.80%**	**2.30%**	**1.50%**	**2.30%**

Source: HM Treasury, May 2023

1: We use CPI forecasts rather than CPIH since they are more readily available and analysis of historical data shows that the CPI/CPIH wedge has been just -0.01% when CPIH is below 5% (as is currently projected for CP7). See Annex A for more details.

2: Revised assumption for the long-run wedge between RPI and CPI inflation, OBR, available at: https://obr.uk/box/revised-assumption-for-the-long-run-wedge-between-rpi-and-cpi-inflation/#:~:text=Summing%20the%20contributions%20gives%20our,estimate%20of%201.3%20percentage%20points

On average, independent forecasts imply that the 5 year inflation wedge varies between 0.75% to 0.95%

- As with the CPIH rate, we consider the most relevant measure of the inflation wedge for the CSAC is the 5 year expectation at issuance - since NR assume the DfT debt has a 5 year tenor.
- Again, this requires an assumption for wedge after forecasts end in 2027. We have assumed that, for 2028-29, the wedge is equal to the OBR's long-run estimate of 1%. As discussed previously, after 2030, the wedge will be zero due to reform. For 2030 itself, we have assumed the wedge is half of the OBR's long-run estimate.
- Using these assumptions, the range for the RPI-CPIH wedge varies between **0.75% to 0.95%** in the earlier part of the regulatory period (see the table opposite).
- This is consistent with the assumption of NR that the majority of debt is expected to be issued earlier in CP7.

Figure 4: Summary of wedge assumptions by year

2023-2027	Average of independent forecasts
2028-2029	OBR long run wedge (1%)
2030	Half of the OBR long run wedge (0.5%)
Post 2030	Wedge of zero due to RPI reform

Table 5: Frontier calculation of the 5 year wedge based on May forecasts

	2023	2024	2025	2026	2027	2028	2029
Implied 5 year wedge	1.21%	0.95%	0.95%	0.92%	0.75%	0.55%	0.30%

Source: Frontier calculations based on forecasts collected by HM Treasury
Note: In the table we have included the expected wedge in the calendar years 2028 and 2029 but we note this is not relevant to the majority of financing under NR's assumptions

The RPI-CPIH inflation wedge is used in the final step to calculate the overall RPI real cost of debt used in the CSAC

- The RPI-CPIH wedge is used in the last stage of the calculation to convert the overall CPIH real cost of debt to an RPI real cost of debt.
- This is a simple step with the inflation wedge being taken away from the CPIH real cost of debt:

$$RPI\ real\ cost\ of\ debt = CPIH\ real\ cost\ of\ debt\ - RPI{:}\,CPIH\ wedge$$

- This means that for every basis point the wedge increases, the overall RPI real cost of debt reduces by the same amount.
- Given the CPIH real cost of debt estimate of 2.21%, this range produces a range for the **RPI real cost of debt of 1.26-1.46%:**

$$RPI\ real\ cost\ of\ debt\ (upper\ end\ of\ range) = 2.21\% - 0.75\% = \mathbf{1.46}\%$$

$$RPI\ real\ cost\ of\ debt\ (lower\ end\ of\ range) = 2.21\% - 0.95\% = \mathbf{1.26}\%$$

Real cost of existing debt estimate

- Nominal cost of new debt estimate
- Real cost of new debt estimate
- **Real cost of existing debt estimate**
- Proportion of new debt estimate

In the following slides we cover:

- An overview of NR's approach to the real cost of existing debt

NR's approach to the real cost of existing debt is based on analysis of its DfT and pre-reclassification debt stocks

- The existing cost of debt is based on an analysis of NR's existing portfolio of debt which is a mostly a combination of existing index-linked bonds (£25.4bn) that date to pre-reclassification and DfT loan facilities (£31.9bn) in place. NR does have some nominal bonds issued pre-reclassification (£2.3bn) but the volume is small relative to the rest of the portfolio.
- NR calculate the weighted average cost of the index-linked bonds at 1.3% and calculated the rate on the existing DfT debt to have a real rate of 1%. While the DfT debt makes up the majority of the existing portfolio at the start of the Control Period, it matures relatively quickly. Therefore, on a weighted basis, **NR estimated an average cost of existing debt of 1.27%.**
- As this relates to NR's existing debt at the start of CP7, **we would not expect the figure to change between DD and FD.**

Table 6: NR debt information provided by NR to TfL

£m	CP6-close	CP7-close	Change	Comment
Existing - DfT	31,859	-	(31,859)	*All to mature by FY 2027-28*
Existing - nominal bonds	2,281	2,225	(56)	*Only £56m will mature in CP7*
Existing - index-linked bonds	25,369	20,782	(4,587)	*Change includes £3,449m CP7 inflation uplift and £8,036m CP7 maturities*
New - DfT	-	39,951	39,951	*Includes refinancing of £31,859m DfT; £56m nominal; £8,036m index-linked*
TOTAL	**59,509**	**62,958**	**3,449**	*The only change in gross debt relates to inflation uplift (i.e. accretion) on index-linked*

Source: Network Rail

Proportion of new debt estimate

Nominal cost of new debt estimate

Real cost of new debt estimate

Real cost of existing debt estimate

Proportion of new debt estimate

In the following slides we cover:

- An overview of NR's approach to the proportion of new debt estimate
- Examples of the proportion of new debt in other sectors

NR calculate the proportion of new debt for CP7 by reviewing the re-financing requirement and the associated timings

- NR calculate the average proportion of new debt over CP7 by estimating the share of its portfolio that needs to be refinanced during the upcoming Control Period. Since NR's spending is no longer financed by debt, there is no new debt in relation to CP7 expenditure. This means that the majority of new debt is focused on the existing debt which requires re-financing in the period.
- NR provided information (see table) setting out that £31.9 billion of the existing DfT debt needs to be refinanced during CP7 as well as £8.1 billion of debt issued before reclassification. Therefore there is forecast to be £40.0bn new debt by the end of the Control Period which is 63% of the total stock of debt at the end of the period (£63.0bn).
- However, NR assume the new debt is not incurred evenly over the Control Period. Refinancing is concentrated in the earlier years, due to the entire existing DfT debt maturing midway through 2027-28. **Therefore the average proportion of new debt over CP7 was calculated at 42%.**

Table 7: NR debt information provided by NR to TfL

£m	CP6-close	CP7-close	Change	Comment
Existing - DfT	31,859	-	(31,859)	*All to mature by FY 2027-28*
Existing - nominal bonds	2,281	2,225	(56)	*Only £56m will mature in CP7*
Existing - index-linked bonds	25,369	20,782	(4,587)	*Change includes £3,449m CP7 inflation uplift and £8,036m CP7 maturities*
New - DfT	-	39,951	39,951	*Includes refinancing of £31,859m DfT; £56m nominal; £8,036m index-linked*
TOTAL	**59,509**	**62,958**	**3,449**	*The only change in gross debt relates to inflation uplift (i.e. accretion) on index-linked*

Source: Network Rail

The average proportion of new debt in the draft determination is much higher than the proportion observed in other sectors

- As shown in the table opposite, the average proportion of new debt in recent price controls in other sectors is 20% or less. This is less than half the 42% new debt used in the DD.
- This relatively high weighting on new debt is a function of how frequently the DfT-related debt is assumed to be re-financed.
- This element of NR's debt is relatively short tenor debt. This is in contrast to the long-tenor debt that is more commonly used for infrastructure assets, and the long-tenor debt NR commonly issued prior to re-classification.

Table 8: Summary of the proportion of new debt in other sectors

Regulator	Price Control	Proportion of new debt
Ofwat	PR19 (2019)	20%
CMA	PR19 appeals (2021)	17%
CAA	H7 (2023)	12%
Ofcom	WFTMR (2020)	20%

Source: Ofwat, CMA, CAA, Ofcom
Note: "WFTMR" stands for the Wholesale Fixed Telecoms Market Review conducted by Ofcom

- The higher weighting on new debt is therefore a function of the specific financing situation in the rail sector following re-classification.
- It is also important to note that as pre-reclassification debt matures, this will continue to shorten the average tenor of debt in NR's debt book unless there is a change of funding arrangements. This is because NR's debt issued pre-reclassification had a longer tenor than the new DfT debt which appears to have a tenor of around 5 years. This will further raise the proportion of debt that gets re-financed each control period.
- While this does reflect how NR is currently financed, it has the impact of increasing the volatility of the CSAC between periods. We discuss this further in the 'Reform of the CSAC' section.

Conclusion on the real cost of debt to be used in the CSAC

Nominal cost of new debt estimate

Real cost of new debt estimate

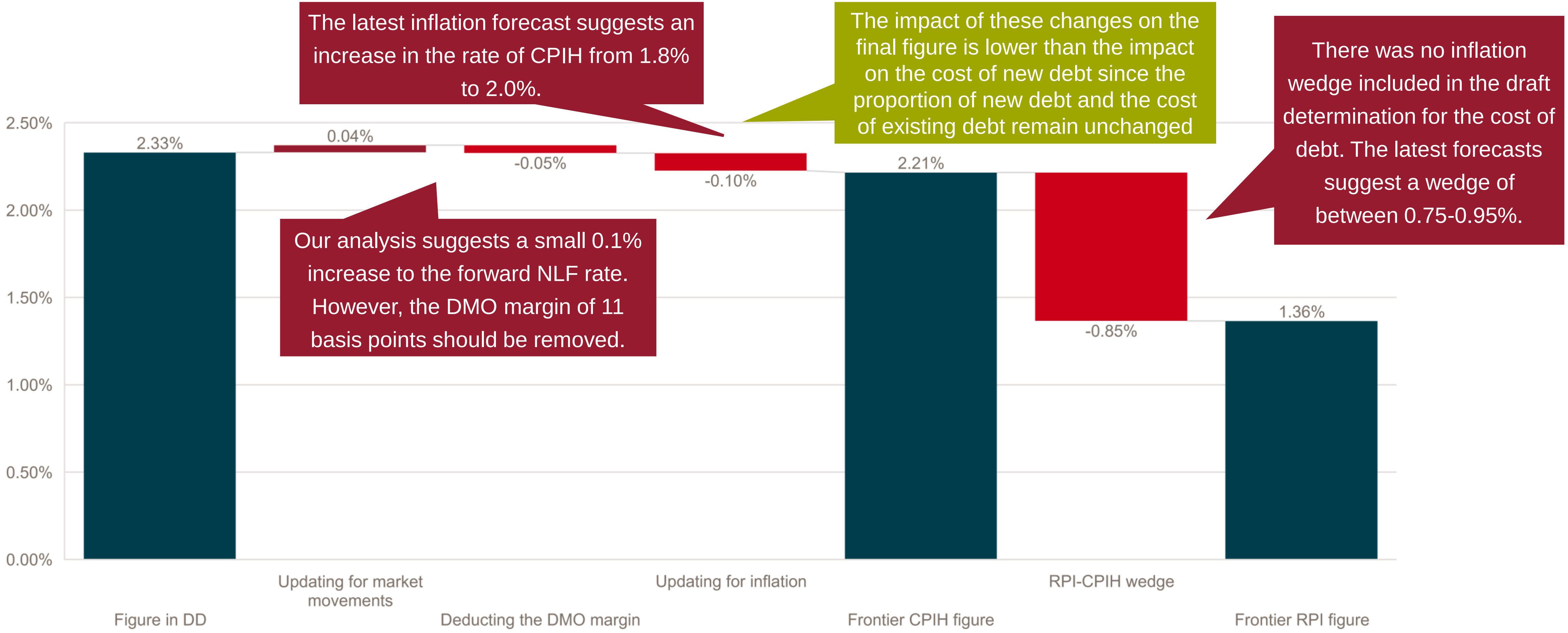
Real cost of existing debt estimate

Proportion of new debt estimate

The following slide uses each of the components to calculate the overall RPI real cost of debt that is used as the RoR in the CSAC

Our analysis suggests that when relevant updates and adjustments to NR's approach are made – the overall RPI real cost of debt of range is 1.26-1.46%

Figure 5: Changes to DD figure for the cost of debt



Source: Network Rail and Frontier calculations

Contents

In this document we also provide supporting information on the TfL's arguments for reform

- In addition to reviewing the cost of debt proposals specific to CP7, TfL has asked us to provide an independent review of potential arguments for reforming the CSAC.
- In this section we set out these potential arguments for reform, and provide the supporting evidence for each. This section is therefore focused on the case for change, rather than providing an appraisal of advantages and disadvantages of alternatives versus the current charge. These arguments are summarised in TfL's document titled "TfL response on proposed CP7 CSAC". Specifically, we provide information on arguments including:
  - Changes to NR's financing since re-classification;
  - The evidence of increased macroeconomic volatility that has occurred since the CTAO agreement; and
  - The charge exposing TfL to relatively high levels of market volatility.

We consider that there are three key arguments for considering CSAC reform

1. There have been significant changes to NR's financing since the CTAO was signed	▪ NR is now re-financed much more rapidly and the terms are less within its control. ▪ The changes to NR financing now means that the CSAC is an additional regulatory burden since the cost of debt estimate, which is used to set the RoR parameter in the CSAC, is not specifically required for any other element of NR's revenues.
2. There is evidence of an increase in macroeconomic volatility since the CTAO was agreed.	▪ There is evidence that both inflation and real interest rates have exhibited greater volatility since 2008 when compared to the years prior. This increased uncertainty has created challenges for TfL's planning.
3. The charge exposes TfL to relatively high levels of market volatility.	▪ The CSAC can vary substantially between Control Periods, and the degree of variability may increase further over time. This exposes TfL to a high degree of cost variation that is not reflective of the benefits received. This is also not consistent with other access charges on NR's network.

We step through these arguments in more detail in the following slides

Argument 1: There have been significant changes to NR's financing since the CTAO was signed

- The way in which NR is financed has changed significantly since the charge was developed. In particular, we note that the new financing NR receives is:

  1) **Re-financed on average more rapidly**: NR's debt book pre-reclassification, which was mostly comprised index-linked bonds, had a long-term average tenor of approximately 15 years. [1] This meant that it took multiple Control Periods for the majority of bonds to be re-financed. The introduction of financing through DfT loan agreements has shortened the average tenor of debt substantially. Now, the majority of debt is re-financed over the course of a single Control Period. Moreover, as the pre-reclassification debt book continues to decline in value, this will further exacerbate the shortening of the average tenor.
  2) **Debt management less within NR's control**: the terms of NR's financing are now defined through the DfT loan agreements, meaning NR has less ability to influence cost, repayment structure, or other features of borrowing (such as currency).

- The changes to NR's financing now means that the CSAC is an **additional regulatory burden.** The cost of debt estimate, which is used to set the RoR parameter in the CSAC, is not specifically required for any other element of NR's revenues. We note that ORR says in the DD *"we do not consider that a weighted cost of capital (WACC) or cost of debt are necessary components to determine revenue requirements, track access charges or network grant levels for CP7."* [2]

- When the CSAC was developed there were greater synergies with NR's regulatory framework, but this is no longer the case meaning that the CSAC is an incremental regulatory requirement. Therefore, there may be ways in which the regulatory burden could be reduced going forward.

1: Network Rail, 'Returns from Rail', slide 25, January 2014.
2: ORR, PR23- draft determination, p12, available at: https://www.orr.gov.uk/sites/default/files/2023-06/18-pr23-draft-determination-policy-position-financial-framework.pdf

Argument 2: There is evidence of an increase in macroeconomic volatility since the CTAO was agreed

- The CSAC is a function of both inflation and the RoR parameter (based on real interest rates). There is evidence that both inflation and real interest rates have been more volatile since 2008 when compared to the prior years.
- The following slides provide evidence of this increase in macroeconomic volatility in both cases.

Implications for TfL from volatility:

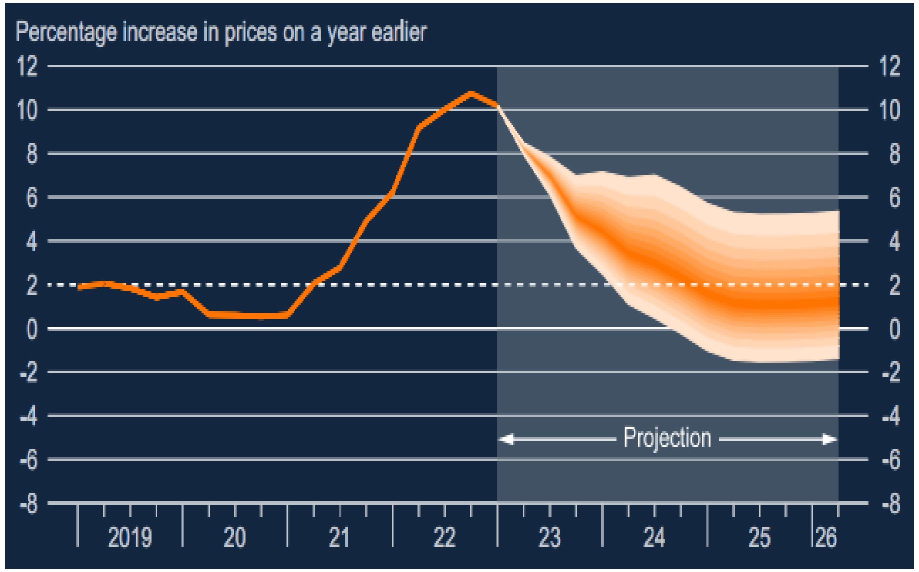
- Volatility in the RoR parameter, and hence the overall charge has a significant impact on TfL.
- In terms of overall quantum of the charge, variations can have a material impact on TfL's finances. A 1% change in the RoR parameter leads to a change in the annual charge of approximately £15m (2022/23 prices) which is equivalent to around £70m (2022/23 prices) over CP7. For TfL this equates to around 2% of our capital renewal plan for the 2024/25 financial year and 5% of total operating surplus.[1]
- Where the predictability and stability of the charge is reduced, this creates challenges for TfL's planning. This is because TfL only know the level of the charge when it is determined just a few months before the new financial year. Therefore it must plan for the year ahead with this increased uncertainty over the funds available for other projects. We note there is a corresponding budgeting uncertainty for NR too.
- In terms of regulation, this has implications against the ORR's economic duty which is to, *"enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance."*[2] We note that given the relative size of NR and TfL, the CSAC has a proportionally greater impact on TfL's business.

1: 2023 Business Plan, TfL, available at: https://content.tfl.gov.uk/2023-business-plan-acc.pdf
2: ORR, 2017, Our rail and road duties, available at: https://www.orr.gov.uk/about/how-we-work/strategy-duties/law-and-our-duties

The inputs to the inflation fan chart produced by the Bank of England show the level of uncertainty around its central forecast

- Since February 1996, the Bank of England's inflation forecast has been published in the form of a probability distribution – presented in what is referred to as a 'fan chart'. The latest version of this fan chart from May 2023 is shown on the right.
- This chart provides a central forecast for inflation over the next 3 years as well as a measure of the range of uncertainty around this central forecast.
- To produce the fan chart, one of the inputs is the uncertainty of the forecast. This is a variance measure that relates to how likely it is that the future events will differ from the central view. This is designed as a forward looking view of risks but the forecast errors from the previous ten years are taken into account when calibrating this measure.
- The Bank of England provides the underlying uncertainty parameter along with the fan chart. On the next slide we show how this uncertainty parameter has changed over time for the forecast of inflation 2 years after the forecast date.

Figure 6 : Bank of England CPI fan chart- May 2023

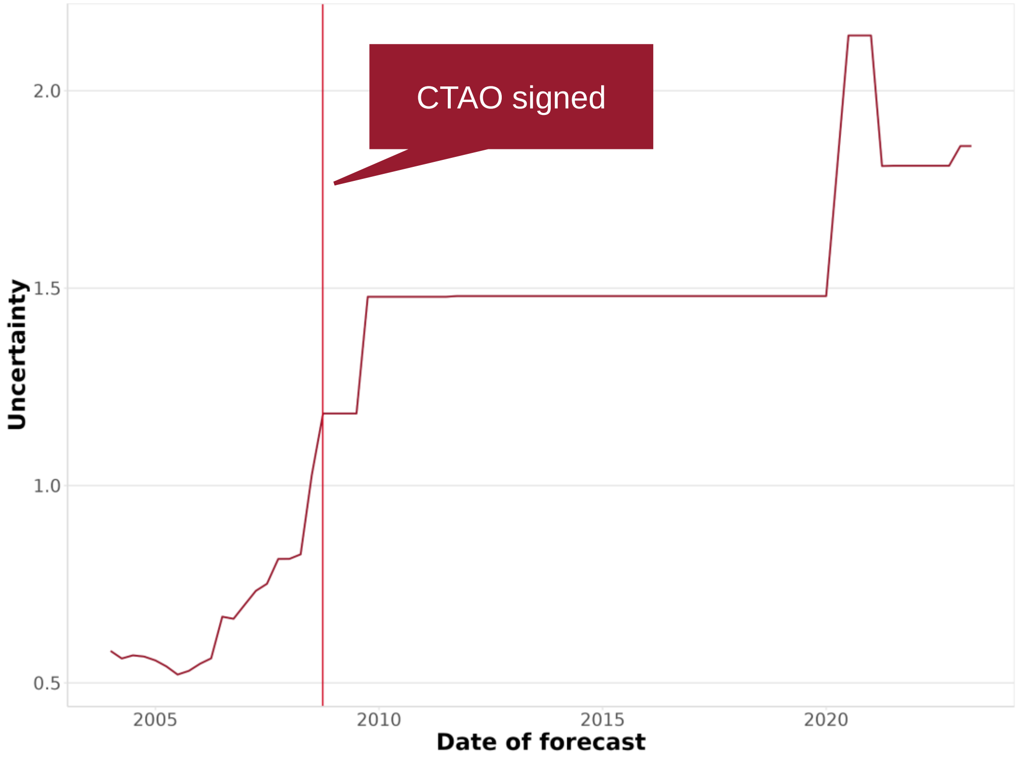


Source: Bank of England

There is evidence from Bank of England data of increased uncertainty in the rate of inflation since the CTAO was signed

- On the right, we show how the underlying uncertainty parameter used to produce the fan chart has changed over time for the forecast of inflation 2 years after the forecast date.
- This shows a significant increase in uncertainty since the CTAO was signed (as measured by standard deviation (sd)). The measure increased to almost 1.5sd by 2009 and has further increased over the last couple of years with a maximum uncertainty of 2.14sd. When the CTAO was signed, the uncertainty measure from the latest forecast was just 1.03sd and before this it was consistently below 1sd.
- The mean of the uncertainty measure has increased from 0.66sd before the CTAO was signed to 1.55sd since.
- This captures greater forecasting uncertain for inflation since the CTAO was been signed.

Figure 7: Input Standard Deviation of inflation forecast 2 years ahead



Source: Bank of England

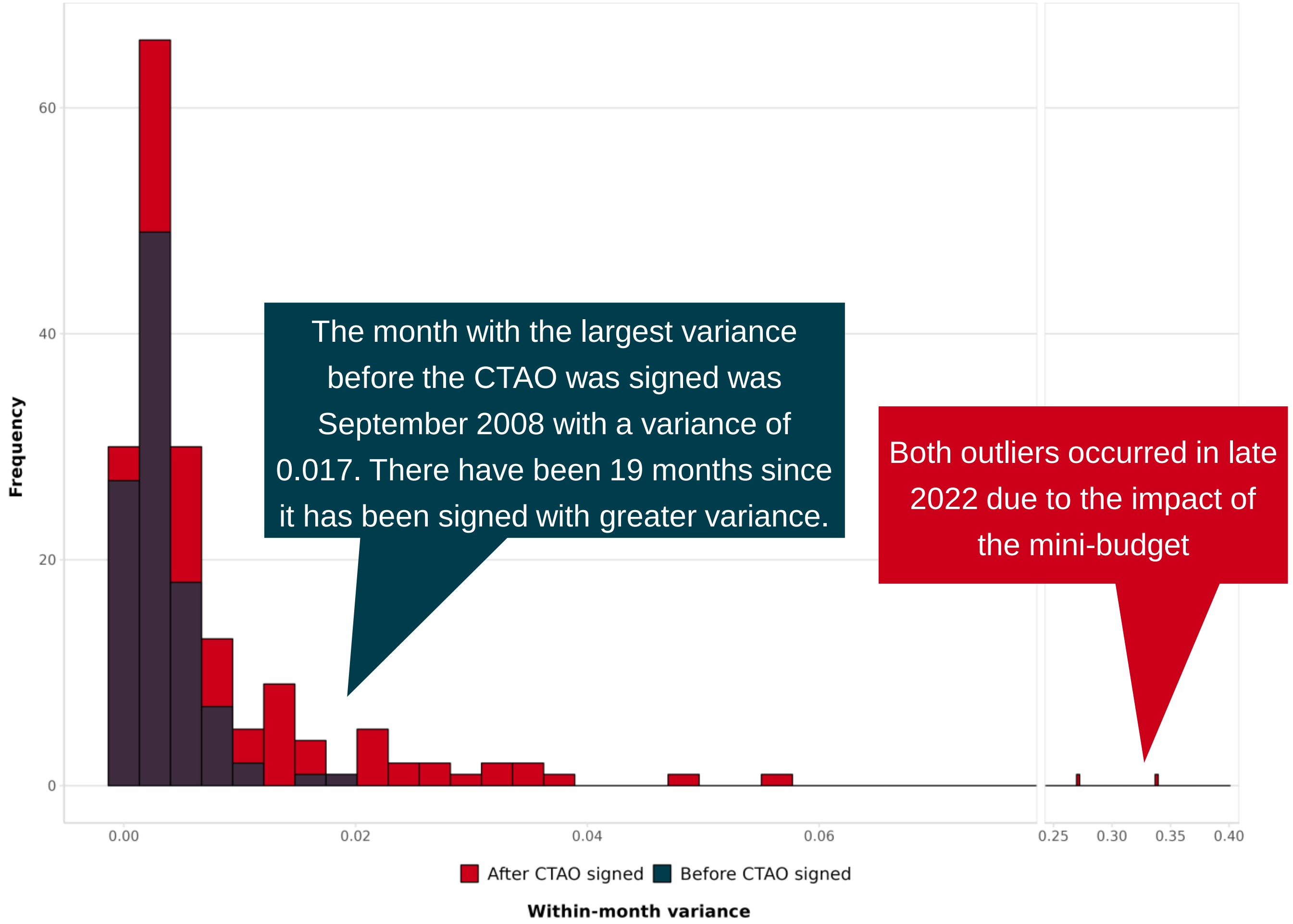
We use government gilt yields to show how interest rate volatility has changed over time

- Interest rates have also become more volatile since the CTAO was signed.
- One measure of interest rate volatility is to look at government gilt yields (which are used to calculate the NLF rate). We can estimate their volatility by calculating is the within-month variance. This is the variance of the daily yield within each calendar month.
- A higher within-month variance suggests an increase in volatility of gilt yields since the yields are changing more within the given calendar month.
- On the next slide, we show how the distribution of the within-month variance of UK gilt yields has changed from before the CTAO was signed. To do this we have looked at daily data on the yield of 20 year government real gilts from January 2000 to June 2023.

Government gilt yields provide evidence that interest rates have become more volatile since the CTAO was signed

- The within-month variance provides evidence that there has been an increase in interest rate volatility since the CTAO was signed.
- The chart on the right shows the distribution of the within-month variance of UK gilt yields before and after the CTAO was signed.[1]
- As well as there being many more months of high variance since the CTAO has been signed, the average variance has increased significantly. The median variance since the CTAO (0.0036) is ~1.5 times higher than it was before it was signed (0.0025). Given that there have been many months of high variance since the CTAO was signed, the mean variance is over 3 times higher.

Figure 8 : Distribution of the within-month variance of 20 year government gilt yields



Source: Bank of England

1: The bars represent the number of months in each variance range. For example, there was 30 months after the CTAO was signed in the lowest variance group, and 27 months before the CTAO was signed for the same variance group (the bars are not stacked)

Argument 3: The charge exposes TfL to relatively high levels of market volatility

- Even with a constant level of macroeconomic volatility, the CSAC can still vary significantly between Control Periods. This is linked to the periodicity and concentration of NR's re-financing. As highlighted in the previous section, the proportion of new debt is high relative to other industries and if funding and financing arrangements remain similar, the proportion of new debt each control period could increase further. *This point is further explored in the following two pages.*
- This makes the cost of debt used in the CSAC sensitive to the prevailing market conditions in the specific time period where re-financing is concentrated.
- Furthermore, this re-financing is linked to NR's overall debt portfolio in how NR has calculated the figure for CP7, rather than being financing that is specific to Crossrail enhancements. We note that NR's total debt is approximately £60bn, whereas the SAC balance is around £2bn.
- This exposes TfL to a high degree of cost variation that may not be reflective of the more stable, long-term benefits that rail users receive from the ONW. In addition, this is also not consistent with other access charges on Network Rail's network. TfL is one of the only counterparties to be exposed to this level of uncertainty related to NR's ongoing cost of debt. No other NR infrastructure enhancement project in recent years has used the cost of debt benchmark and therefore isn't exposed to this risk.

The change in NR's financing has also had an impact on increasing the volatility of the charge (1 of 2)

- One way to consider the proportion of new debt is to express the years in the Control Period relative to the average holding period of debt. For example, assuming the refinancing needs are spread evenly over time, a 5 year Control Period coupled with a 20-year average tenor of debt would give 25% total re-financing assumption per Control Period.

$$Proportion\ of\ debt\ refinanced = \frac{Length\ of\ Control\ Period}{Average\ tenor\ of\ debt} = \frac{5\ year\ Control\ Period}{20\ year\ average\ tenor} = 25\%$$

- Given the fixed 5 year Control Periods, the proportion of debt that needs to be refinanced depends on the average tenor of debt. If the average tenor of debt decreases then a greater proportion of the debt will need to be refinanced every Control Period.
- The above formula will give the amount of new debt at the *end of* every period. However, the *average* amount of new debt over the Control Period also depends on when it is refinanced.
- If the debt is refinanced evenly over the Control Period, then the average amount of new debt will be half of the total that needs to be refinanced (so 12.5% in the above example) but it will be higher if more of the debt needs to be refinanced earlier in the period.

The change in NR's financing has also had an impact on increasing the volatility of the charge (2 of 2)

- For NR in CP7, the total new debt proportion at the end of the period is estimated to be 63%. This is relatively high due to the significant weighting on shorter tenor DfT debt. Once all of the long term debt from pre-reclassification has matured, the proportion of new debt, under current trends, may be close to 100% at the end of every Control Period – assuming a 5 year control period is maintained.
- As the average proportion of new debt over CP7 is expected to be 42%, which is higher than if the debt matured evenly over the Control Period (31.5%), this implies an average refinance date earlier in the next regulatory period.
- **This high proportion of new debt adds volatility to the overall cost of debt**. This is because a much greater proportion of debt needs refinancing every period.
- When the average amount of new debt is ~20% as with other sectors, only a small proportion of the debt book has to be refinanced at a new rate relative to the previous period which means the change in the overall rate are more gradual. This is because the average cost of debt is less dependent on interest rates at a given point in time, and instead are similar to a longer-term trailing average.
- In NR's case, where the majority of debt will have to be refinanced at a new rate every Control Period, the overall rate can change significantly relative to the previous period.
- The short tenor of the DfT debt is a clear change from the way that NR issued debt pre-reclassification where the last bond does not mature until 2052.[1] This change to the way NR is financed has created a divergence versus other sectors. For instance, Ofwat noted that the average tenor of the bonds in the water industry was around 12.5 years compared to the DfT debt of around 5 years.[2]

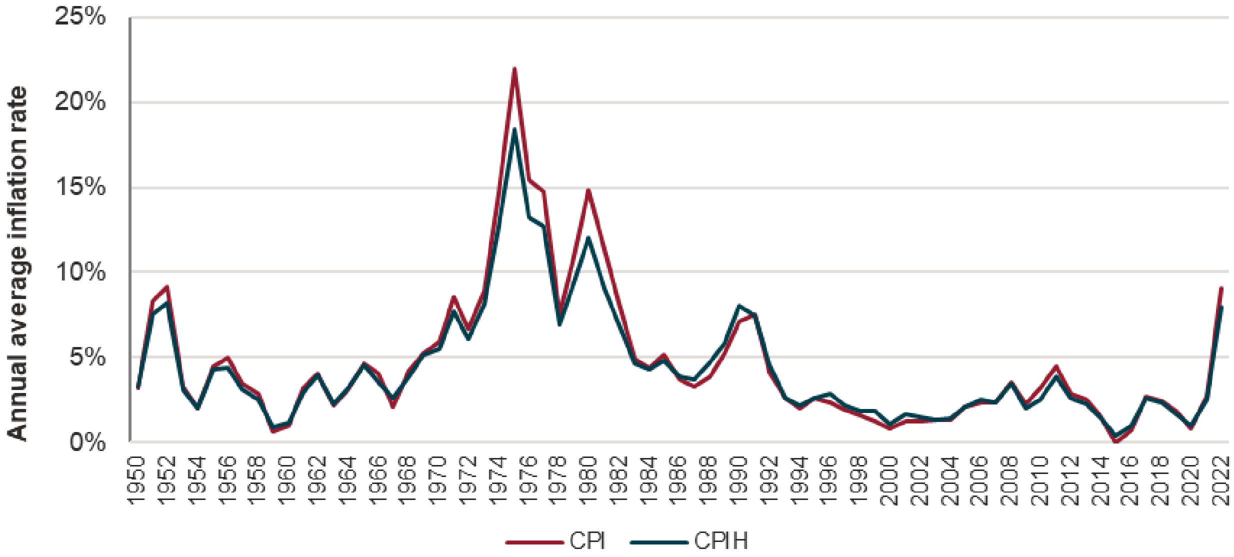
1: Network Rail Limited Annual report and accounts 2023, Network Rail, available at: https://www.networkrail.co.uk/wp-content/uploads/2023/07/Network-Rail-Annual-Report-and-Accounts-2023.pdf
2: Monitoring financial resilience report 2021-2022, Ofwat, available at: https://www.ofwat.gov.uk/wp-content/uploads/2022/12/MFR_2021-22.pdf

Contents

Annex A - Analysis of the CPI-CPIH wedge shows negligible differences between the indices for the CP7 time period

- We use CPI forecasts rather than CPIH since they are more readily available.
- To test the validity of this, we have looked at historical evidence on the CPI-CPIH inflation wedge. To do this, we compare the estimated inflation rates from each index over time since 1950. We select 1950 as this is the furthest back in time that estimates of the two indices are available.
- Our analysis shows there can be some differences between the two measures over time. However, the only significant deviations appear to be during periods of high inflation. To illustrate this, the average CPI-CPIH wedge is 1.11% during years where CPIH was over 5%, whereas the wedge was -0.01% during the years where CPIH was lower than 5%.
- Therefore, given that we expect inflation to have returned to lower levels during CP7, we consider it reasonable to assume that there is no long run CPI-CPIH wedge for the same period.

Figure 9: CPI and CPIH time series- 1950-2022



Source: ONS

Annex B - The calculation of the forward rate uses the rates from the 2.75 and 7.75 year NLF loans

- We calculate the forward rate, which gives an estimate of the rate of a 5 year loan in 2.75 years time. Given the proportion of new debt figure implies an average refinancing date of *prior to* the mid-point of the Control Period, the implied rate in 2.75 years time is a suitable estimate for the expected cost of new debt (see slide 29 for further details on timing assumptions). [1]
- To calculate the forward rate, we used the following formula which uses the 7.75 year rate (loans between 7.5 and 8 years) and the 2.75 year rate (loans between 2.5 and 3 years) as the DMO published data in these half-yearly intervals.

$$5\ year\ rate, 2.75\ years\ ahead = \left(\frac{1 + 7.75\ year\ rate^{7.75}}{1 + 2.75\ year\ rate^{2.75}}\right)^{\frac{1}{5}} - 1$$

- Using this formula, and the NLF rates provided by the DMO for the 31st July 2023,[2] we calculated the forward rate to be 4.2% (without the additional 1.5% margin or removing the DMO's 11 basis point margin). This is set out in the table below

Table 9: Frontier calculation of the NLF forward rate

Date	7.75 year loan rate	2.75 year loan rate	5 year rate, 2.75 years ahead
31 July 2023	4.49%	5.03%	**4.19%**

Source: DMO, Frontier calculations

1: NR assume the new debt is not incurred evenly over the Control Period. Refinancing is concentrated in the earlier years of the control period.
2: Data provided by DMO, available at: https://www.dmo.gov.uk/responsibilities/local-authority-lending/historical-interest-rates/
Note that we have used the "New Loan Maturity" rate as specified by the 2014 facility agreement between NR and DfT.

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PR23 draft determination consultation: pro forma

This pro forma is available to those that wish to respond to our draft determination consultation and it is structured around the main areas of the draft determination. Other forms of response (e.g. letter format) are equally welcome, though we would be grateful if these could be structured broadly in line with the areas listed below (where you wish to comment), to aid our review of responses.

Further information on how we will treat information provided to us as part of this consultation is available in **annex A** below.

Please send your response to pr23@orr.gov.uk by **31 August 2023**.

About you

Full name: [Redacted]

Job title: [Redacted]

Organisation: Transport for the North

Email*: [Redacted]

Telephone number*: [Redacted]

**This information will not be published on our website.*

1. General comments on ORR's draft determination for Network Rail in CP7

High-level / general comments on our draft determination. Please use sections below for more detailed responses on specific topics.

6.1 One of TfN's principal objectives is to encourage transport investment that will enable transformational, sustainable and inclusive economic growth across the North. We believe that the North's railway network is below the standards seen in some other parts of Great Britain (in terms of the reliability, speed and frequency of services, and complementary attributes such as stations facilities), and we wish to see significant enhancements to the network in order to realise transport "levelling up" between the North and other areas.

6.2 We understand that specific enhancements investment is outside the scope of this Draft Determination, as your review of Network Rail concentrates on its ability to undertake operations, maintenance and renewals. However, we believe that discharging these core functions in an efficient manner is the bedrock of building a railway network which can be expanded and enhanced in future. Efficiency in operations, maintenance and renewals allows stronger business cases for enhancements to be built, as the whole life costs relating to new infrastructure or additional services can be sustained at an economically viable level. We also note that Network Rail recognise that sophisticated whole life costing is necessary to prepare for climate change and reinforce asset resilience.[1]

6.3 Furthermore, we believe that a truly efficient and effective renewals programme must consider, in every case, whether "like for like" renewals are really the best long-term option. For modest additional capital expenditure, it may often be the case that more modern infrastructure can assist in reducing operational expenditure (e.g. through reducing maintenance costs) or can provide additional benefits (e.g. through improving reliability and therefore train performance). A comprehensive whole life costing policy will identify these opportunities. Work already undertaken by TfN can assist with this process, as we have identified opportunities to implement linespeed improvements cheaply and undertake small performance enhancements as part of our recent *Strategic Rail Report.*[2] These types of minor enhancement are much more efficiently implemented as part of scheduled renewals programmes where possible.

6.4 We are therefore pleased that overall ORR are supportive of Network Rail's approach to the management of the network, despite what ORR recognise as a "complex and challenging context"; issues such as the unpredictable recovery from the pandemic, inflationary pressures, ongoing industrial action, severe weather events and declining train performance have contributed to an unprecedented background situation for Periodic Review 2023.[3] The uncertain pace of reform of the industry structure (e.g. the establishment of Great

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[1] e.g. Network Rail, *Network Rail Asset Management: Weather Resilience and Climate Change Adaptation Plan,* Nov. 2021, p. 48
https://www.networkrail.co.uk/wp-content/uploads/2021/11/Asset-management-WRCCA-plan.pdf
[2] Transport for the North, *Strategic Rail Report,* May 2023, pp. 65-67 & pp. 83-86
https://transportforthenorth.com/wp-content/uploads/Strategic-Rail-Report-2023_Final_v3.pdf
[3] ORR, *PR23 Draft Determination: Introduction,* 15th June 2023, p. 9
https://www.orr.gov.uk/sites/default/files/2023-06/06-pr23-draft-determination-introduction.pdf

British Railways and any accompanying legislation) complicates this situation. The rail industry is also expected to make a significant contribution to the United Kingdom's decarbonisation objectives, which aligns with our own decarbonisation strategy.[4]

6.5 Nevertheless, we have a number of concerns which are explained in more detail elsewhere in this document, but can be summarised as follows:

- We note that ORR have given the two Network Rail regions in the North slightly stretching targets for train performance (in terms of "On Time" percentages, passenger cancellations and freight cancellations). However, given that train performance is almost uniformly worse in the North than elsewhere in the country, we would like to see a commitment to reducing this discrepancy in rail reliability in support of the transport "levelling up" objective. Indeed, some of our partners have suggested that a more challenging target for the Northern portions of the two routes might be appropriate;
- The disruption compensation mechanism (i.e. Schedule 4 and 8 payments) does not provide sufficient granularity to assess the impact on passengers in the North, and may therefore lead to sub-optimal outcomes;[5]
- There should also be a "levelling up" aspect to accessibility issues;
- The assessment of cost planning is tolerant of a higher degree of heterogeneity among regions than we would expect for an organisation which should be sharing best practice; and
- We are concerned as to whether Network Rail currently have the resources to undertake major strategic planning exercises (such as the 2032 Concept Timetable).

6.6 However, we welcome the ORR's focus on the four key objectives that it wishes Network Rail to pursue, namely **safety** (for passengers, the workforce and the wider public), **performance** (i.e. the punctuality, reliability and resilience of both passenger and freight services), **asset sustainability** (considering costs, benefits and value over the whole asset life), and **efficiency** (with stretching but realistic targets).

[4] Transport for the North, *Transport Decarbonisation Strategy,* Dec. 2021 https://transportforthenorth.com/wp-content/uploads/TfN-Transport-Decarbonisation-Strategy-TfNDEC2021.pdf

[5] This critique is offered whilst recognising that the usefulness of Schedules 4 and 8 has been challenged within the context of publicly-owned railways, as they effectively involve redistributing public funds.

6.7 TfN would also like to note that one of our principal objectives is the development of a system of rail industry governance for the North which is responsive to local needs, with TfN, Mayoral Combined Authorities and other local government bodies having a constructive relationship with Great British Railways' future regions and GBR headquarters. Encouraging each region to be efficient, accountable and engaged with local stakeholders is a key part of this process, and we welcome ORR's review of Network Rail's stakeholder engagement.

6.8 We also welcome the update on the expected pre-tax weighted average cost of capital (WACC) and the real pre-tax cost of debt for Network Rail, as we understand that this is an important part of their decision-making processes, but we would like more clarification on the implications if real interest rates vary widely from what is expected.[6]

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2. Comments on our supporting draft settlements for the System Operator (SO), Scotland and England & Wales regional documents

For further information, please see our Scotland, System Operator, Northwest & Central, Wales & Western, Eastern and Southern draft settlement documents.

6.1 TfN have examined the settlements and targets that have been published for the two Network Rail Regions which are relevant to us, namely Eastern[7] and North West & Central.[8] We have studied the relevant documents to assess the targets that have been set, and the table below shows a comparison of the Year 2 (2025-6) and Year 5 (2028-9) Network Rail regional proposals and ORR targets.

6.2 An initial point raised by these figures is whether the carbon emission reduction targets of circa 20% by the end of CP7 are ambitious enough, and are compatible with the Government or TfN's

[6] ORR, *PR23 Draft Determination: Overview – England & Wales,* 15th June 2023, p. 33 https://www.orr.gov.uk/sites/default/files/2023-08/03-pr23-draft-determination-overview-england-and-wales_0.pdf

[7] ORR, *PR23 Draft Determination: Settlement Document for the Eastern Region,* 15th June 2023, pp. 21-22 https://www.orr.gov.uk/sites/default/files/2023-06/07-pr23-draft-determination-settlement-eastern.pdf

[8] ORR, *PR23 Draft Determination: Settlement Document for the North West & Central Region,* 15th June 2023, pp. 20-21 https://www.orr.gov.uk/sites/default/files/2023-08/09-pr23-draft-determination-settlement-north-west-and-central_0.pdf

goals of net zero by 2050 or 2045. Clarification would be welcomed on this issue.

Table 2.1: Draft ORR Success Measure Baseline Trajectories

Item	Eastern Region				North West & Central Region			
	Year 2 (2025-6)		Year 5 (2028-9)		Year 2 (2025-6)		Year 5 (2028-9)	
	Network Rail proposal	ORR target	Network Rail proposal	ORR target	Network Rail proposal	ORR target	Network Rail proposal	ORR target
"On Time" performance	68.5% to 70.0%	70.6%	68.4% to 70.8%	70.8%	59.2% to 61.0%	63.2%	60.0% to 62.5%	63.9%
Cancellations	2.7% to 3.8%	2.3%	2.7% to 3.8%	2.3%	3.2% to 4.5%	2.3%	3.2% to 4.5%	2.3%
Freight cancellations	1.5% to 2.8%	1.3%	1.5% to 2.8%	1.3%	1.0% to 1.9%	1.0%	1.0% to 1.9%	1.0%
Efficiencies (2023-4 prices)	£167m	£167m	£271m	£271m	£126m	£126m	£266m	£266m
Carbon emissions (Scope 1 & 2)	-7.6pp	-7.6pp	-20.0pp	-20.0pp	-8.4pp	-8.4pp	-21.0pp	-21.0pp
Biodiversity units	1.9pp	1.9pp	4.8pp	4.8pp	1.0pp	1.0pp	4.0pp	4.0pp
Freight growth	3.0%	3.0%	7.5%	7.5%	3.4%	3.4%	8.6%	8.6%

6.3 It can be seen that for a range of metrics (financial efficiencies, carbon emissions, biodiversity and freight growth), the ORR has accepted the Network Rail regions' suggested targets. However, we note that the ORR has required significantly better train performance metrics from both regions, especially regarding "On Time" performance from North West & Central, cancellations from North West & Central, and freight cancellations from Eastern Region.[9]

6.4 TfN welcome this focus on train performance improvement, as the relatively poor punctuality and reliability of trains across the North is one of the key areas in which we would like to see our railway network "levelled up" with that in the rest of the country. In our *Strategic Rail Report* of May 2023, we identified numerous small changes and enhancements which could be enacted across our territory in order to

[9] It should be noted that TfN's own target for punctuality relates to the different metric of Public Performance Measure (PPM). We would like to see PPM for both Northern Trains and TransPennine Express return to the pre-2018 level of 91.2%, much higher than the current baselines of 84.0% and 87.2% respectively. This implies a greater improvement in performance than indicated in the Draft Determination.
cf. Transport for the North, *Strategic Transport Plan: Draft for Consultation,* May 2023, p. 124
https://transportforthenorth.com/wp-content/uploads/TFN_StrategicTransportPlan_Master_web_V3.pdf

achieve this.[10] Many of these could be delivered in parallel with renewals projects, so the efficient delivery of renewals could assist in advancing this objective. This possibility also reinforces the call for more challenging performance targets for the North (as made in Section 1 above).

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3. Our review of Network Rail's stakeholder engagement

For further information, please see our assessment of each region and System Operator engagement with its stakeholders in our draft settlement documents under section 2 above.

6.1 Transport for the North were pleased to have participated in Network Rail's Regional consultations for their CP7 Business Plan during April 2022. The consultations were wide-ranging and tailored to the relevant local issues. However, we think that the ORR documentation should be more explicit about who the relevant stakeholders are; particularly with regard to topics such as decarbonisation, the number of stakeholders could be very large, including every highway authority for example.

6.2 We note that the ORR have provided an assessment of Network Rail's stakeholder engagement for each region, and separately for the System Operator.[11] We provided responses to the previous ORR survey regarding Network Rail's liaison in each region, with the general observation that the commitment and approach of individual Network Rail teams was good.

6.3 However, we have found that Network Rail's overall approach to stakeholder liaison has been disjointed between regions. In our recollection, the aforementioned business plan workshops were more thorough for the North West & Central region than for Eastern. We also believe that for many issues it would be advantageous to have a single point of contact (SPoC) within Network Rail for such engagement.

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[10] Transport for the North, *Strategic Rail Report,* May 2023, pp. 76-87 https://transportforthenorth.com/wp-content/uploads/Strategic-Rail-Report-2023_Final_v3.pdf

[11] ORR, *PR23 Draft Determination: Settlement Document for the System Operator,* 15th June 2023, p. 24 https://www.orr.gov.uk/sites/default/files/2023-08/12-pr23-draft-determination-settlement-system-operator_0.pdf

4. Our review of Network Rail's proposed outcomes

For further information, please see section 3 of our England and Wales and Scotland overview documents and our related supplementary document on outcomes.

6.1 We welcome a clear focus on the outcomes which Network Rail will deliver during CP7. This includes the focus on performance, and the importance of good asset management in preventing infrastructure depreciation from undermining improvements in reliability.

6.2 We welcome the fact that ORR recognises that "second only to value for money of train tickets, the reliability and punctuality of services matters most to rail passengers."[12] However, we are given the general impression by the Draft Determination that ORR's goal is to encourage efficient management of the network (from a safety and financial perspective) while ensuring no further deterioration in train performance. We do not find this acceptable, as train performance across the North is already almost uniformly poorer than elsewhere in the country, as shown in the table below.[13] TfN would like to see a commitment to reducing this discrepancy, in support of the "levelling up" policy, and ideally devolved funding to enable a locally-controlled programme to address it.

Table 4.1: Percentage of trains "on time" (January to March 2023 compared to April to June 2022)

Train Operating Company	On time percentage (January to March 2023)	On time percentage (April to June 2022)	Operations in the North
TfL Rail (Elizabeth Line)	85.2	88.1	None
Greater Anglia	84.0	87.4	None
c2c	81.8	81.6	None
Heathrow Express	79.7	81.3	None
Merseyrail	75.5	71.8	All
Chiltern Railways	74.3	76.4	None
London Overground	73.5	79.1	None

[12] Office of Rail & Road, *PR23 Draft Determination: Supporting Document – Outcomes,* 15th June 2023, p. 22 https://www.orr.gov.uk/sites/default/files/2023-08/14-pr23-draft-determination-supporting-document-outcomes.pdf

[13] Office of Rail & Road, *Passenger Rail Performance: January to March 2023,* 25th May 2023, p. 20 https://dataportal.orr.gov.uk/media/2203/passenger-performance-jan-mar-2023.pdf
cf. Office of Rail & Road, *Passenger Rail Performance: 1 April to 30 June 2022,* 15th Sept. 2022, p. 12 https://dataportal.orr.gov.uk/media/2121/passenger-performance-apr-jun-2022.pdf

Train Operating Company	On time percentage (January to March 2023)	On time percentage (April to June 2022)	Operations in the North
Caledonian Sleeper	70.3	73.8	Significant
ScotRail	70.3	74.0	Small part
Govia Thameslink Railway	68.2	75.1	None
South Western Railway	66.6	73.5	None
Great Western Railway	64.8	68.8	None
Southeastern	64.6	72.8	None
West Midlands Trains	61.4	63.5	Small part
Transport for Wales Rail	60.9	61.3	Small part
Northern Trains	60.7	65.5	Almost all
London North Eastern Railway	58.1	67.8	Significant
East Midlands Railway	56.4	58.0	Small part
Lumo	54.9	60.8	Significant
Hull Trains	53.7	64.2	Significant
CrossCountry	51.7	58.6	Significant
Grand Central	47.8	51.6	Significant
TransPennine Express	47.4	58.4	Almost all
Avanti West Coast	42.4	46.5	Significant

6.3 Given that the impact of severe weather events was cited by ORR as a background factor to this year's Periodic Review, and preparations for future severe weather are mentioned at many points throughout, we note that there did not appear to be a definition of what ORR considers severe weather (as opposed to events withing the usual range of variation that must be accommodated).

6.4 Another area about which we are concerned is the relationship between the disruption compensation mechanism (Schedule 4 and Schedule 8) and planning of infrastructure works and possessions. We appreciate that there is a relationship between the formulae for compensation and the ORCATS revenue allocation system, and that the assumptions regarding the demand impact of scheduled and unscheduled disruption are therefore related to standard industry techniques (such as those detailed in the Rail Delivery Group's Passenger Demand Forecasting Handbook). However, we note that the relevant formulae lack geographical granularity, with distinctions being made only between London and "non-London" trips in some cases. We are concerned that decisions on planned disruption may be made which are sub-optimal for the North due to this lack of detail.

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5. Our assessment of accessibility

For further information, please see section 12 of our outcomes document.

6.1 We note that ORR have provided a section on accessibility improvements which are deemed necessary as outcomes for Network Rail to provide to travellers.[14] We welcome that this is fairly comprehensive, covering design standards, tactile paving, lifts, escalators, toilets, the availability of information on accessibility, Diversity Impact Assessments, and the Public Sector Equality Duty under the Equality Act 2010.

6.2 However, we again note that there is a "levelling up" aspect to this issue. Research undertaken by Mott MacDonald to support TfN's Stations Strategy indicated that across the North, only about 48% of our railway stations have full step-free access to the whole station (to current standards). Conversely, about 26% have only poor standard ramps, and another 26% do not provide any step-free access to at least some parts of the station.[15]

6.3 We recognise that there is more to accessibility than just step-free access, as some passengers have difficulties travelling due to invisible disabilities, or hearing and visual impairments. However, these figures regarding step-free access indicate that this important aspect of accessibility is relatively poor in the North; our data indicates that 52% of our stations don't provide full-step free access, whilst researchs by the Leonard Cheshire charity indicates that for Britain as a whole the corresponding figure is just 38%.[16] Again, this is a large discrepancy that needs addressing; at the present rate of progress, poor accessibility at the North's railway stations will not be rectified until the second half of this century, and for social exclusion reasons this is not acceptable. We understand that a stations accessibility audit was undertaken following the publication of the Williams-Shapps Plan in May 2021, and we await details of the findings.

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[14] ORR, *PR23 Draft Determination: Supporting Document – Outcomes,* 15th June 2023, pp. 77-80 https://www.orr.gov.uk/sites/default/files/2023-08/14-pr23-draft-determination-supporting-document-outcomes.pdf

[15] Mott MacDonald (for TfN), *Northern England Station Enhancements Programme: Strategic Outline Business Case,* May 2022, p. 50

[16] Leonard Cheshire, 'Why We're Campaigning for Accessible Train Travel,' 3rd January 2020 https://www.leonardcheshire.org/our-impact/stories/why-were-campaigning-accessible-train-travel

6. Our review of Network Rail's proposed costs and income

For further information, please see sections 4 and 7 of our England and Wales and Scotland overview documents and our related supplementary documents on our Sustainable and Efficient Cost assessment and other income – property and charges.

6.1 We note that one aspect of this Draft Determination is the variety of approaches taken by different Network Rail Regions in respect of regulatory targets. This is made very clear in the supporting documentation in regard to cost planning, where the differences between Regions in relation to (for example) the development of unit rates for track renewals, signalling installation, earthworks and similar work are explained.[17] This is relevant to Transport for the North, as our area is served by both Eastern and North West & Central Regions, and they take very different approaches to cost planning for track, signalling, structures, earthworks, drainage and telecoms work.

6.2 We understand that circumstances differ between the two Regions (e.g. with regard to the state of current infrastructure, preparations for HS2, accommodation of freight), and we welcome the ability of different Regions to try varied approaches and then share best practice; however, we also expect that Network Rail will begin to move to a more "joined up" approach in due course. Network Rail's customers (whether operators or end users) are concerned with outcomes and outputs rather than the managerial convenience of different Regions, and might expect more consistency of approach (through shared best practice) than shown in the AMCL report.

6.3 Although we appreciate that the focus of the Draft Determination must be on renewals and maintenance expenditure, we have been very concerned about the capital expenditure estimates that Network Rail have quoted for various enhancements proposals, and we believe that this must relate to difficulties in controlling the costs of infrastructure investments in general. We note that the Borders Railway reinstatement of 2015 has been widely praised for efficient implementation, with 35 single-track route miles and 7 new stations being delivered for £353 million.[18]

[17] AMCL, *A Review of NR Regions' Approach to Cost Planning and Unit Rate Development,* Version 1.1, 14th Nov. 2022, pp. 6-8 https://www.orr.gov.uk/sites/default/files/2023-06/45-cp6-to-cp7-transition-how-unit-cost-rates-are-calculated-and-used.pdf

[18] This was achieved despite the area's challenging topography and geography, and the long period of time that had elapsed since the line was closed in January 1969.

6.4 However, the estimates that we have received from Network Rail for some recent proposals (including reinstatement of the Leamside Line and extensions to the platforms at Manchester Airport) suggest unit rates vastly in excess of what has been achieved on "benchmark" projects. Similarly, the Edinburgh Glasgow Improvement Programme delivered electrification, journey time improvements and station enhancements at a cost of circa £18¼ million per route mile, which is only a fraction of any of the estimates for the proposed options for Transpennine Route Upgrade (TRU). We would like to see more investigation of this issue.

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