Q1. Do consultees agree that the key themes/areas set out above are the right ones to focus on given the aims and objectives of this work? If so, do you consider that these are the areas which should be the industry's highest priorities?

These themes are certainly the right ones to focus on and if delivered will significantly improve flexibility and responsiveness within the industry.

Q2. Consultees are invited to comment on the level of specification in Schedule 5 of TACs and the specific barriers which, in their view, might prevent a move towards a less prescriptive specification of rights.

Our response will argue for:

(1) Less prescriptive rights

ORR should adopt less specified Schedule 5 rights, with all additional specification being commercially justified;

(2) Schedule 5 re-openers

Depending upon the outcome of (1), there may be a continuing need for re-openers linked to key events relevant for timetable recasts (e.g. capacity enhancement, refranchising, RUS considerations, events as defined in Part D); and

(3) An ability to propose changes to rights

A longer term option would be to enable Network Rail to propose changes to rights so that flexibility can still be secured for the industry. Where this is proposed and deemed to reduce the value of the TAC to the operator, compensation would be paid by Network Rail.

(1) Less prescriptive rights

Network Rail believes that the current level of specification in Schedule 5 does not lend itself to optimal timetable solutions and efficient capacity utilisation. The over prescription of rights can create conflicts rather than network optimisation and there is a risk of creating impossible puzzles.

If TAC Schedule 5s were less tightly specified, the railway would have further flexibility to enable the industry to respond to changing circumstances. This approach is consistent with our recent response to ORR on incentives, which emphasised the importance of allowing the industry to mature and make

‘trade-offs’. This is also consistent with the alignment of incentives work being carried out through the Rail Delivery Group.

The rail industry is indeed maturing with co-operation and collaboration increasing and this should reduce the need for over specification of rights. It should build trust and operator confidence, reducing risk averse behaviour as evidenced by a desire to overprescribe rights.

We recognise the need for better alignment with DfT on specifying franchises. The TAC Schedule 5 should not be viewed in isolation and should flow from the RUS, through the franchise and into the development of the timetable. We welcome the opportunity to remain involved in discussions on franchise reform as the future nature of Service Level Commitments will be a key driver for Schedule 5.

The RVfM study indicated the need for industry solutions to be ‘horses for courses’. Whilst recognising there are different drivers for intercity, suburban and rural service providers, our preferred specification of access rights is quantum, calling patterns and specified equipment for all. There may be exceptional circumstances which could justify variations to this, but these should be the exception and not the rule.

The current high level of specification of rights leaves little room for innovation and growth. It also creates an administrative, bureaucratic and costly exercise each timetable change.

Timetabling is a complex and challenging process and over specification adds to this, increasing the possibility of duplication and error. It can be time consuming and complex to ascertain whether all access rights have been satisfied every time there is a timetable change. The law of diminishing returns also applies as further contractual reviews add less and less value.

We are also concerned about the competition implications of retaining the status quo and how operators could artificially construct timetables to limit competition from others, including open access competitors.

Over specified TACs may be considered to be ‘hard wired’ contracts and this is contrary to the Access and Management Regulations. It is therefore essential that multiple constraints currently within track access contracts are removed. These may have developed intentionally or inadvertently, arising from access rights being overlaid upon historic access rights.

As a general rule, flexibility within a contract should increase rather than remain static over time. To this end, one approach could be to create a funnel or tapered approach to flexibility within access rights. The length of contracts should be agreed in accordance with the Access and Management Regulations. As a general rule, a normal contract would be five years in length, with parties wishing to secure a longer contract having to justify this in terms of investment, risk or commercial contracts. The longer the contract, the looser the specification for future years of the contract.

This will increase the ability to manage capacity on the network and should be linked to the public interest and an assessment of benefits to the passenger – the industry being run in the interests of the passenger and freight customers.

We recognise that operators are likely to have concerns about the risk of gradual erosion of services, journey times and connectivity if contractual access rights are less tightly specified. In response, we would direct them to Network Rail's licence obligations. The purpose is to secure the "improvement, enhancement and development of the network" and to satisfy reasonable requirements in respect of the "quality and capability of the network" (1.1 of Network Rail's Network Licence). It is also to "meet the reasonably foreseeable future demand for railway services" (1.4 of the Network Licence) and within capacity allocation to "co-operate with any potential provider or potential funder so as to identify ways in which its reasonable requirements in respect of the allocation of capacity on the network could be satisfied" (1.18 of the Network Licence).

In addition to the licence obligations, operators have protection through the Network Code, particularly within Part D and Part G. There are also protections built in through the various appeal processes.

A move towards less specified rights will require a review of resources at each stage of the Part D process. More emphasis will be placed on advance timetable planning work during the Initial Consultation period and a greater use of Event Steering Groups. Without this, it would not be possible to squeeze all timetable development into the 14 weeks between D-40 and D-26.

In freight markets where commercial arrangements are based on volume rather than specific timed slots (such as coal) it is often inefficient to offer both rights and specific paths to an individual FOC. In such sectors business can transfer between FOC's regularly and volumes can switch between origins on a weekly basis dependant on a number of supply chain drivers. We would therefore argue that FOC's gain no value/advantage from holding specified rights or paths for such traffic. What they need is visibility and assurance that capacity exists on core routes to accommodate such volumes and that Network Rail will allocate this capacity in line with demand. We would therefore recommend a wholesale re-think on the nature, scope and mechanics behind freight rights in such sectors and a review of whether a FOC or Network Rail should "hold" paths for these trains in the WTT.

It is extremely rare (outside of the intermodal sector) for a freight end user to require a "timed" arrival for particular trains. In most cases specific arrival and departure times are driven by facility opening hours and hours of operation rather than a need for precise timings. We therefore would expect a FOC to justify any specific request for detailed rights and where no greater need than opening hours exists, we would secure the flexibility this offers.

(2) Schedule 5 re-openers

Depending upon the outcome of (1) the continuing use of Schedule 5 'reopeners' is a further option. A clear understanding of the triggers for these would be the key issue. We would be content to limit this to the network and other users, specifically (1) Major Projects, (2) Rolling Stock, (3) RUS and (4) Significant Timetable Change.

Significant Timetable Change would align with the recently introduced process of Event Steering Groups and Calendar of Events, both of which will become unduly constrained if there are over specified access rights.

Given that a RUS requires collaborative industry agreement, it follows that Network Rail should be able to initiate change once strategic industry buy-in has been achieved.

There is an important link here to performance improvement on the network. Where the industry is failing consistently to hit a regulated target there should be scope to address this (with adequate safeguards).

(3) An ability to propose changes to rights

Network Rail recognises that detailed specificity in TACs may raise conflicts of interest. On the one hand, specificity is driven by the genuine commercial needs of operators. We believe these needs centre mostly (though not wholly) upon resource utilisation which is a compelling consideration for businesses. On the other hand, detailed specificity can cause problems in terms of managing capacity and making timetables more efficient for all network users.

We also note that, at the ORR seminar on 15 February 2012, it was raised anecdotally that an incumbent operator could attempt to manipulate a timetable to restrict competition. If this does take place – or even if there is a perceived risk that this *might* take place – it is a serious concern and risks significantly undermining trust between parties.

For these reasons we would propose a further reform which we feel strikes a balance between maintaining protection for operators whilst allowing contractual detail to be challenged where there is a compelling case to do so.

At present, if Network Rail identifies a timetable change (of benefit to capacity or competition) which requires an adjustment to an operator's access rights we can seek to negotiate this change. If agreement is not reached, we are unable to make an application to ORR.

For the operator, there are much stronger negotiating levers; they may make a Section 22A application to the ORR to seek to have a contractual change enforced upon Network Rail.

It is our view that recourse to a Section 22A application at the end of an unsuccessful negotiation should be extended to Network Rail. We

acknowledge that this would most likely require primary legislation. Network Rail would need to demonstrate a public interest justification for our proposal (which would usually be efficiency or competition). The operator would have the ability to demonstrate their needs – and both parties would be assured of a robustly independent determination.

We recognise that this proposal would carry with it the implication of greater ORR involvement in industry decision making which is potentially contrary to the direction in which the industry is developing. However, we also note that the mere possibility of a Section 22A application by Network Rail could be an incentive for an operator to reach a negotiated outcome. Without substantial reform, as the network gets more crowded it is likely ORR involvement in decision making will increase.

The proposal also has merit as a means of aiding competition. It would not give additional power to Network Rail's decision making, but it would be a means of promoting more reasoned debate about the public interest use of network capacity on a network which is becoming increasingly crowded.

Previous discussions on buy-back of access rights have not reached a consensus and we would see value in re-visiting this debate. The existing mechanism contained within Track Access Options applies to contracts longer than 15 years and is triggered where demonstrable additional benefit can be obtained from an alternative use of a path. We accept the need for a further discussion on compensation. The cost of a path could be determined by the scale of investment and there may need to be a complex negotiation on value. In this regard, we would be happy to work through these matters with a group of interested parties.

Q3. Consultees are invited to comment on where they believe responsibility for conducting the timetable process should lie and why. In doing so, consultees should provide specific examples of difficulties they have experienced during the timetable process and suggest ways in which these could be addressed.

The timetable planning process within the rail industry should remain the responsibility of a single central organisation in the interests of efficiency, transparency, consistency and sustainability and to reduce the potential for any undue discrimination.

The Access and Management Regulations require this function to be independent of train operation.

Network Rail has extensive knowledge of the network and its capabilities. There is an obvious link with our obligations to operate, maintain and renew the network. Engineering access is tied to the timetable process.

The role of the system operator continues to develop and it is imperative that we get this right. We have one network and multiple users. The rolling timetable and Calendar of Events (with Event Steering Groups) is becoming established following the introduction of the new Part D of the Network Code. This is now the process for managing major timetable changes. The intention of these changes is to provide the industry with clear, timely and transparent visibility of significant future events and likely timescales.

Within Network Rail the current interface already exists with passenger and freight customers and any change in timetable responsibility away from Network Rail would require significant and costly systems' changes.

We have started a process of improvement (centralising at Milton Keynes and with the introduction of ITPS), but accept we still have further to go in streamlining our processes and resourcing appropriately.

One idea we would propose is for train operators to consider aligning some of their train planning resource alongside ours with us maintaining overall objectivity in decision making. We would envisage the creation of a 'Centre of Excellence' for train planning. This would improve communication, reduce duplication, align processes and save costs – all objectives we should agree upon within the rail industry.

Current problems we have identified include a lack of discipline within some operators, out-of-date or historic processes and duplication of resources. There is often a failure to present access proposals in a consistent manner (some operators now using purely electronic means whilst others remain paper-based). There is a reluctance to remove unused paths or rights. Finally, rolling stock details are particularly slow at being provided at the appropriate time.

We recognise there is the opportunity for us to develop our market / revenue / economic expertise in terms of allocation of train paths and in better articulating trade-offs.

There are two other workstreams currently looking at improving access planning processes and the interface between capacity and performance. One area being explored within these is to build maintenance access into the baseline timetable and thereby reduce the bid-offer cycle.

It is our view that Network Rail is best placed to retain responsibility for conducting the timetable process, having the expertise and system view.

Q4. Do consultees agree with the suggestion of a 'commercial purpose' clause? If so, what do they think it should include?

Network Rail does not see that a commercial purpose clause would add value to the overall process. Indeed, it could easily detract from the simplicity of a less prescibed set of Schedule 5 rights.

In theory, it could help contextualise franchise commitments and Service Level Commitment obligations, but would readily lend itself to containing words like 'reasonable', 'adequate' and 'sufficient'. It would thereby become highly subjective and unlikely to be measurable, objective or quantifiable.

What would be the process for agreeing such a commercial purpose? It would most likely lead to lengthy (and costly) debates on interpretation, whilst achieving very little and could lead to increased industry disputes.

Were it to be adopted, it would need to align with the Decision Criteria and should be consistent with the expression of purpose and rights, as contained within the annual Priority Date Notification Statement.

Q5. Do consultees agree that there is scope to simplify and reduce the amount of information currently provided in Schedule 5? If so, consultees are invited to comment on our specific proposals and to put forward any other suggestions they have to improve the structure and content of Schedule 5.

We believe there is significant scope for simplifying the expression of access rights. This becomes more important as the network becomes more congested. It is also increasingly important with longer franchises and requests for longer contracts.

Our desire is to see a set of simplified tables, with operators not feeling obliged to complete all of them. The nature of their business would determine which tables they complete.

Less prescriptive rights are a pre-requisite to a consolidation of tables.

Model clauses have helped in terms of standardisation, but there is still scope for further roll-out across all contracts and a reduction in bespoke provisions.

Schedule 5 information could be consolidated by service group and this would make the data more readily accessible for train planners. It would be particularly helpful if there could be a formalised electronic mechanism for such information that could compare a proposed timetable plan against any operator's Schedule 5 rights. It should be possible to design a tool like this.

All the key information should be contained in a single place in the contract. It should combine at the very least quantum, calling patterns and specified equipment and could possibly even include other variables (interval / journey times etc.).

We agree that information from Schedule 2 (Routes) and Schedule 5 (Services) could be merged into a single location or table.

We propose the adoption of ‘go anywhere rights’ or ‘right to roam’ for ancillary passenger moves (subject to route / gauge acceptance and agreed through the normal timetable process). There may be an argument for an obligation to retain route knowledge over diversionary routes.

Definitions could be tightened and made more consistent e.g. Definition of peak and off peak and of Bank Holidays.

The Additional Passenger Train Slots (contingent rights) table could be deleted and replaced with the right to apply for a timetable variation as exists within freight contracts. The right to bid is already contained within Part D where it can be justfied as a customer reasonable need.

The Earliest and Latest passenger train slots table is not required as the information is already contained within the Engineering Access Statement.

We propose removing or at the very least combining intervals and clockface departures into a single table with + or – flex. Having two sorts of similar rights restricts the ability to deliver an optimal timetable on a multi-user route.

Specified equipment should be retained, although reference to timing characteristics may be a better way to specify this, rather than rolling stock.

Journey time protection should be simplified into a single table or instead removed altogether and replaced with a general obligation on journey times (arguably already covered by licence obligation on network capability).

Schedule 5 Paragraph 8 contains six tables that are rarely used – platform rights, connections, departure time ranges, stabling, turnaround times and quantum of additional calls. These should be removed from the template track access contract and only included as a bespoke table if there is an over-riding commercial reason. Specifically, stabling is not required as protection can be found in 5.8 of the front end and turnaround times are already contained within Timetable Planning Rules (maximum and minimum turnaround times).

Less specific rights will also assist in the removal of footnotes which have a tendency to move a contract towards hard wiring or multiple constraints. The general principle should be no footnotes, but care should be exercised before creating disproportionate extra lines of entry within the tables.

There is some merit in the idea expressed at the Industry Seminar (15 February 2012) of a single database of all Schedule 5s, but we would want to assess the likely resource implications of such a database. We would not

want to create something that expended significant resource when the objective is to reduce industry costs.

Q6. Do consultees have any comments on our proposed approach to RT3973?

The inclusion of the expiry date of an RT3973 in the Special Terms column of the Rights Table in Schedule 5 and the initiation of any possible extension would appear to be a sensible approach.

Q7. Do consultees agree that the 'SPOTS' forms a basis for resolving the misalignment between the timetabling and access approval process? In responding, it would be helpful if consultees could explain:

- **if they are not supportive, why and whether they have any alternative proposals; or**
- **if they are supportive, whether they have any specific concerns or see potential issues not already identified in Annex A. Are there any solutions to these issues?**
- **If there are concerns with the proposal, could this be mitigated by limiting the scope of the SPOTS provision to a train operator's existing routes and stations?**

We agree that improved alignment between track access and timetabling processes is desirable, but do not believe that SPOTS is the answer.

Instead, we believe there is a need to encourage improved submission of significant change proposals at D-55 and that we should more effectively use the initial consultation period between D-55 and D-40 (Priority Date). We have shared these ideas with industry members who attended the ORR workshop on 15 February and were part of the syndicate group that explored the SPOTS proposal.

The Event Steering Group process should become the industry-wide means to apply long term thinking and introduce significant timetable improvements (managing capacity constraints and improving performance amongst other things). It may be necessary to revise the ESG process where the outcome is likely to require revised access rights (a materiality threshold would be helpful).

Network Rail believes that SPOTS is not the solution to the problem of misalignment. It could simply defer the point at which a decision is made regarding the granting of full rights. By its nature, it is a temporary granting of rights based on the fact that the service in question can be timetabled and takes no account of commercial issues. Instead, the emphasis should be on bringing out issues to be resolved in a timely manner and dealing with them, rather than granting temporary rights.

SPOTS could create perverse behaviours and operators could actively seek to introduce trains into the timetable through this route. This would involve 'bidding' outside the timetable process, thus avoiding Significant Change and Priority Date advice (and in theory without challenge from the industry), then operate the service for six months and have it included in the next timetable. It would be difficult for the industry to fully comply with the current Timetable Change Route Assessment process (TCRAG) in these circumstances. In reality, a SPOT may have been validated and work in pure timetabling terms, but fail the TCRAG assessment.

All parties should encourage and support proper business development processes throughout the industry and last-minute changes do not assist either Network Rail or other industry players. Network Rail takes a holistic approach and has to think about the impact on all other operators, as well as passengers and freight users. There is a recent example where a draft timetable had been agreed with an operator, fully validated in 'project mode', Railsys modelled and risk assessed by the route (and found to be acceptable). Then at the Priority Date, a wholly different access proposal (and timetable) was put forward, effectively invalidating much of the previous work. This has caused significant difficulties not only to Network Rail, but also to all other affected operators (passenger and freight). This is not good practice and should be avoided in future.

Significant changes first requested at D-40 can have serious implications for performance and will work against the disciplines being instilled through the Long Distance Recovery Plan and other performance initiatives. Network Rail needs better sight of proposed changes to allow for proper assessment of the safety and performance implications. SPOTS would not enable this and would only be appropriate in cases where no other operators are impacted and capacity is obviously available. We fully understand the need for the industry to react to emerging commercial needs, but should not put ourselves in the position where safety and performance could be compromised.

Below, we map out how we consider the existing processes could work more effectively:

By D-55, operators should declare any changes to access rights that they are seeking in line with their timetable change proposals. This would be visible to Network Rail, ORR and other operators who would then have the opportunity

to lodge potential objections or areas of concern. They would indicate the grounds for objection – abstraction, performance etc.

Network Rail would be obliged to produce a Project Plan for the resolution of the issues and identify which party was responsible for resolving them – Network Rail, ORR, TOC, FOC (not all issues would be resolved in this time period, but we would need to understand the route to resolution).

Our internal CRE team would commence drafting the revised Schedule 5 and negotiation of access rights with the respective operator.

Benefits of this approach would be that more information is provided sooner and this would enable planners to make an informed decision using the Decision Criteria earlier in the process. Within the current Significant Change process there is no guarantee or requirement that issues will be resolved by the Priority Date. This is a potential pitfall as planners then have to validate unfinished aspirations against a live validation scenario.

D-40 (Priority Date) - Operators declare their access proposals. There should be no surprises at this point as D-55 would have covered the aspirations. Planners will commence timetable development and apply the Decision Criteria where necessary. We believe operators should not make further access proposals (which are unsupported by access rights) after the Priority Date.

D-26 - New Working Timetable is published.

D-22 - Appeal process period ends (most issues raised would already have been identified between D-55 and D-40).

D-18 - This would become the latest date for submission to ORR for changes to access rights. There would be no surprise applications at this stage as the Schedule 5 would cover those rights declared at D-55.

Q8. Consultees are invited to let us have any further commentson the access application process, including evidence of where it has not worked, together with any further suggestions on how they would like to see it improved.

We do not recognise the reference by ORR to ‘eight weeks’ (paragraph 4.41). The Criteria and Procedures quotes ‘up to 12 weeks’ for review of a contentious contract or one requiring focussed regulatory scrutiny.

On the monitoring of applications, Network Rail is content for ORR to make its weekly table of track access applications more widely available. Anything of commercial interest to other TOCs would have been removed.

In relation to consultation timescales, Network Rail can only consult when the TOC has come forward with a proposed Supplemental and we have agreed terms. We understand concern has been raised by a freight operator who are consulted on all applications and sense it is sometimes encouraged to give a rapid response while perceiving slower progress with its own applications.

We agree with the importance of preliminary discussions on a TOC's requirements. There have also been occasions where the TOC's (not so much FOC's) have not been forthcoming with all previous timetable development undertaken by Network Rail and this has not given ORR a complete background of work carried out. Anything that helps to make these discussions more transparent and visible to the ORR would be beneficial and would show the high volume of advance timetabling work.

As well as operators discussing their access terms with Network Rail, applicants must also consider the impact of their proposals on other relevant users (not necessarily limited to other TOCs) and should engage at an early stage with them, particularly where more major projects are concerned. This is a refreshing steer as Network Rail has previously been advised that we couldn't rely on, and shouldn't expect, operators to enter in to discussions with each other. Instead, we have driven the decision-making based on allowable contractual flex coupled with viable timetabling solutions.

Anything that encourages operators to talk to each other and in turn work through mutually agreeable solutions is a significant step forward.

Q9. Do consultees agree that we should revisit our proportionate approach criteria with a view to handing more responsibility to the industry?

Handing greater responsibility to the industry is certainly the right way to go with increased use of the General Approval process.

Q10. Do consultees support the principle of extending the scope of track access General Approvals to include more new contracts under s18 and a greater number of s22 amendments? Are there any views on how far we should go with this or views on potential issues or risks?

Network Rail agress that we could extend the scope of General Approvals to cover all agreed applications where any concerns raised in consultation have been resolved.

This would be most useful where the TOC is the only operator on the section of Network concerned. For example, the LSER 26th SA covers changes on the Medway Valley line which has no freight services and no other passenger operator. On the other hand, FOCs often argue that changes to passenger services may mean the loss of 'white space' and inhibit the potential for future freight growth.

There is a limited risk of frivolous or vexatious 'holding' concerns to block or delay timetable development and a risk of 'last-minute' changes to force things through. This can be overcome by a mature attitude from all affected parties. However, in most cases it will not be known until after consultation has closed whether there are any contentious issues and how long it may take to resolve them. This would not necessarily reduce timescales.

On the question of the cap on additional permitted charges in Schedule 7 that can be agreed using a General Approval, Network Rail would be keen to see this increased and would propose £50k/year, rather than the current £20k/year. However, this is not a contractual amendment that is often used.

Q11. Do consultees have any other suggestions for extending the scope of our General Approvals?

No, the response to Q10 covers this issue. We have reviewed all the applications on ORR's currently weekly list and apart from part of the LSER 26th believe the nature of all of them would require regulatory scrutiny to a greater or lesser extent.

Q12. Consultees are invited to raise any further issues relating to the reform of contractual arrangements and consultation processes for stations and depots.

It is appropriate that a review of depot access arrangements should be initiated, as the current structure is seen as inflexible and not best matched to current industry needs. This is because much fleet supply now relates to new depots being designed and built by train suppliers to suit specific rolling stock. Such depots are not geared to the "open access" requirements of older, traditional multi-fleet depots. Hence there are challenges as to why Depot Access Conditions need to be incorporated. If they are not, it imposes on Network Rail a requirement to deal with issues arising from the land disposal licence condition (in the absence of access conditions, such disposal requires specific consent).

Network Rail has previously raised with ORR (see our paper of March 2011) the confused status of LMDs in relation to charges and documentation, and the extent to which increasing provision by competing, non franchised independent organisations, needs to be aligned with the regulatory regime.

Regarding the station access regime, ORR is also consulting on the Station Change process, which Network Rail will be responding to separately and therefore will not be adding comments to this consultation. It would seem sensible that while a number of TOCs remain on the old leasing structure the industry should be looking to re-do the split of responsibilities in a better way, at the very least so that either NR or TOC 'do all' by asset.

Q13. Do consultees consider that the regulatory requirements prompted by a change in franchise, or another similar event, is greater than it could be? If so, how might the impact of such an event be reduced or mitigated?

Network Rail recognises that a change of franchise can require significant new or amended documentation, hence resources need to be applied, and legal costs are incurred. As a result of franchise competitions being brought forward by the DfT, there will be significant activity over the next few years.

It is not felt that the issue is necessarily one of overbearing regulatory requirements, but the "normal" structure of industry documentation does not always permit particularly efficient dealing. For example, if our managed station access agreements have an end date and the franchise is extended (other than within the already permitted "seven periods"), then Supplemental

Agreements have to be granted that do not fall within the scope of a General Approval, hence needing regulatory specific approval.

The approach of having documents for longer terms that could then be assigned or novated between successors to station access would seem to be an approach worth investigating, codifying and promulgating more widely.

Q14. Do consultees consider that it would be useful for Network Rail to undertake an assessment of depot capacity in order to identify long-term needs. Do consultees believe that it would be more appropriate to carry this out when requirements for new or additional rolling stock are being identified?

Network Rail is not aware of specific examples where it has not made efforts to identify depot capacity when requested. We would appreciate understanding what has prompted this comment. Assuming that in this context, the term “depot capacity” means throughput of vehicles requiring servicing, or the provision of light maintenance services, then that “capacity” is a measure that really falls to the Depot Facility Operator to supply. This is because capacity is both a measure of what plant, equipment and track stabling capacity is available at the depot, and how the configuration of the depot permits use of that plant and equipment. Hence if a depot needs many shunting moves to cycle trains through the depot, then the capacity of that depot will be much lower than that of a depot where an efficient through-flow of trains is available.

Network Rail published the Passenger Rolling Stock strategy in September 2011. We also hold details of plant and equipment assets at depots, and information on stabling capacity has been provided through the Network RUS.

We agree that there is an absence of a medium / long term industry strategy for depot facilities, hence there tends to be a reactive approach when new depot requirements arise. Network Rail has convened depot summits, and has had regular liaison with ATOC about depot issues, which are considered to have helped develop some more understanding of potential industry needs, but a more complete picture would require a better developed rolling stock strategy. The reality is that it is not possible to create a coherent depot strategy until such time as there is a clear strategy for new fleet provision and the associated fleet cascades which accompany such changes. Even then, the provision of depot facilities will depend on the contracting strategy for new fleet provision and the availability of rail connected sites in appropriate locations.

The review of Part F of the Network Code should also address the issue of vehicle acceptance in relation to depots, as there are potential issues of

compatibility between new trains and existing depot facilities that should be identified before the fleets start to be delivered for testing. Currently, depot provision or modifications are often specified after the vehicle acceptance process has been undertaken.

An emerging issue is that many new and existing “stabling” locations would benefit from providing limited “depot” facilities such as CET pump-out, hence strictly fall within the scope of LMD activity. There is an opportunity to consider whether these locations need to fall within the scope of a full blown LMD, with leases and Depot Access Conditions, or whether some other form of documentation would be more appropriate and less costly. There is in any event a requirement to document the inevitable ancillary accommodation and site access needs of train crew at such locations, which is not currently addressed via track access or other industry arrangements.

Q15. Consultees are invited to comment on the functionality of APAs, and on specific amendments which could be considered to facilitate their ease of use.

Asset Protection Agreements (APAs) set out the terms on which TOCs (and any other parties) undertake works at stations, depots and on the network where those works can affect Network Rail’s controlled infrastructure.

At stations and depots where TOCs have leases, certain works can be undertaken under the terms of the leases when Network Rail gives its consent - so called ‘Landlord’s Consent’. Network Rail encourages the use of Landlord’s Consent where the circumstances allow. The criteria for works being allowed under Landlord Consent are shown on the Network Rail website that handles TOCs applications and is summarised below.

Network Rail has been developing a proposal (particularly with First Great Western) to extend the use of Landlord Consent. This initiative extends the scope of technical approvals given under Landlord’s Consent. When concluded, these arrangements are intended to be applied to works at stations across the network. The possible application of this initiative to depots is also being considered.

In undertaking works at stations Network Rail is concerned that the works do not prejudice the safety of the operational railway. For those works that will become the responsibility of Network Rail, they must be designed and built to the appropriate standards to meet our safety obligations, and can be operated and maintained at optimum whole life cost.

Network Rail and TOCs are subject to ROGS, but ROGS do not cover the full extent of Network Rail's legitimate interest in the design, implementation, operation and maintenance of the works.

Where works are outside the Landlord Consent arrangements, and an APA is required, Network Rail has the ORR approved template agreements (APA and Basic APA) available as the starting point for discussions on the terms for asset protection. TOCs are familiar with these template agreements. Where an individual project requires changes to the template, Network Rail will work with the TOC on appropriate terms. Similarly, when a TOC wishes to move away from the terms of the ORR approved template, Network Rail will negotiate in good faith, whilst protecting its position in respect of safety, regulatory, technical and commercial matters.

The first instance of asset protection terms being incorporated into a station lease has been for stations within the Greater Anglia Franchise that has just been let. Network Rail is content that these leases contain provisions that allow Network Rail to adequately protect the railway operating through the stations as well as our remaining interest as landlord under the long leases.

Works ***cannot*** be undertaken under Landlord's Consent if:

- There is a risk to the safe operation of the network; or
- Works are outside the leased area; or
- A possession or power isolation affecting the network is required; or
- The lessee does not have specialist skills or knowledge; or
- The works require Network Rail to grant specialised technical approvals; or
- The works may affect services and utilities that serve the network; or
- The works are not covered by the lessee's safety management system ('safety case').

Q16. Consultees are invited to comment on the necessity of a review of Part C, and on who should take responsibility for any further work on Part C.

Whilst the proposed changes to other parts of the Code such as Network Change should be the priority (see question 18), we continue to believe that there are some areas of Part C which would benefit from revision, to clarify and simplify the way that the process works.

We accept ORR's observation (p29 of the consultation) that many of the Part C issues "revolve around industry behaviour", but we maintain that there are

instances where the “industry behaviour” is a consequence of the way that Part C is drafted. For example, the banding structure of industry representation has barely changed in 18 years, and we believe that this is now worth review. We also believe that there would be significant merit in reducing the timeframe required for ORR to propose changes using C8.

Recent CRC debate indicates that Network Rail’s view on these points differs fundamentally from those of other access parties, such that an industry review group is unlikely to achieve consensus. We therefore feel that for meaningful change to be effected, ORR would need to be supportive also and would need to be prepared to use its C8 powers to implement any such changes.

Q17. Do consultees agree that there is a case for reviewing the need for Part F? If so, consultees are invited to set out what elements of Part F need to be retained, if any (either in a reduced Part F or as part of Part G). If any consultee disagrees, it would be helpful if they could say why and what change, if any, they would like to see. Consultees should also comment on whether it would be appropriate for any review of Part F to be taken forward by the Part G IWG.

Network Rail believes that Part F is important to the industry and should, therefore, be retained as part of the Network Code. However, there is a scope for improvement, which we outline below.

Vehicle Change deals with commercial matters across the industry (access contracts) and goes beyond safety and compatibility in dealing with the business impact of changes as well. Vehicle Change provisions protect those access parties who may be affected/impacted upon, i.e. other Train Operators and Network Rail.

<u>Network Rail’s ability to propose Vehicle Change</u>

Network Rail has, through a range of projects, a widespread role in changes to vehicles involving various technical and commercial solutions. Examples of industry-wide projects include TPWS, GSM-R, ERTMS and SSWT selective door opening which require changes to both infrastructure and trains. Network Rail has also promoted fitment of equipment to trains such as sanders, anti-icers and a number of small fitment projects through the Performance Improvement Fund (PIF).

A common theme with such projects is that Network Rail funds the infrastructure and the commensurate train fitment works; and for the PIF projects the funding is solely for vehicles without necessarily the involvement of any infrastructure works. This matter of funding supports the argument that

Network Rail should be able to propose Vehicle Change to secure associated outputs. Although there is limited evidence that desirable changes to vehicles have actually been prevented as a consequence of Network Rail not having the right to promote Vehicle Change, there are examples where this has meant delays, which in turn have led to reputational risks, the possibility of compromising project outputs and increased costs.

Where Network Rail funding is being used, it may be able to secure more economic and efficient outcomes for the industry, particularly for projects requiring changes to both infrastructure and vehicles.

Although changes may have gone ahead previously in the absence of this right, they may well have done so with additional costs. For example, although GSM-R implementation was agreed with Train Operators, it was only after a protracted period of time which will have incurred additional project risks and costs. If Network Rail had been able to propose Vehicle Change, vehicle fitment could have been separated from infrastructure works which would have enabled the associated Network Change to be agreed more quickly, and with reduced costs and risks.

Where Vehicle Change is necessary to provide industry benefits, Train Operators may be reluctant to promote them because as the proposer they would bear the compensation cost risks. In such circumstances the Train Operators may well prefer Network Rail to be the proposer in order to avoid such risks.

For proposals for changes to vehicles that provide industry benefits, it should help provide improved interfaces with Train Operators and ROSCOs.

In any situation where a Train Operator may be concerned or unhappy with a proposed Vehicle Change, sponsored by Network Rail, it would have protection through its right to object to changes through the provisions of Part F and ultimately, they would have recourse to the normal dispute mechanisms.

Network Rail's proposals to enhance Vehicle Change

From the above, we believe that there is a case for Network Rail being able to propose Vehicle Change, particularly given that Network Rail would fund or part-fund such schemes. However, the proposal is not to seek a general right (as proposed some time ago), but to develop drafting changes to enable a limited but defined capability and to establish criteria that need to be satisfied, i.e. the project:

- is funded or part-funded by Network Rail;
- outputs include wider industry benefits;
- affects vehicles which operate over more than one Route;
- requires changes to both infrastructure and vehicles; and

- provides efficiencies through the installation of on-board monitoring on vehicles.

Furthermore, we believe that separating the provisions for objecting to proposed Vehicle Changes from those related to associated compensation issues would improve the alignment of incentives for the industry. Such an approach is similar to the 'Compensation Framework Agreement' which is proposed as an amendment to Part G of the Network Code (see our response to Question 18). Any compensation issues would still be subject to an appeal/ dispute process but delays, in reaching agreement or a failure to agree, would not necessarily delay the implementation or efficiency of proposed changes.

Q18. Consultees are invited to comment on the issues they have experienced during the network change processwhich would need to be addressed as part of a review.

We believe there are several issues recently experienced within the Network Change process which could be successfully addressed through potential amendments to Part G of the Network Code and we will work with RDG to agree an overall package of reform. These suggested amendments would also contribute to the improved alignment of incentives across the industry, as described in Sir Roy McNulty's Rail Value for Money Study.

We acknowledge at the same time that the related processes and industry engagement can also be improved by access parties focusing on their own processes for managing Network Change, both individually and collectively. In Network Rail's case, this encompasses internal guidance and briefings.

This response is structured as follows:

(1) Objections to a Network Change proposal

- Future use of the network
- Compensation agreements
- Provision of insufficient information

(2) Definition of Network Change

(3) Amendments to Network Change proposals

(4) Consultation process and Appeals procedure

(1) Objections to a Network Change proposal

In recent years, agreement has been increasingly difficult to secure, owing to difficulties in resolving stakeholder objections. This can mean serious risks to the successful implementation of projects owing to extended timescales and related increased costs.

For all projects, engagement with stakeholders starts in the initial stages and continues through to the Network Change consultation. Despite this early engagement, there can be a surprising number of objections from access parties in response to the formal Network Change consultation.

The main reasons given by Train Operators for their objections can be summarised as follows:

- Where it is proposed to reduce network capability, Train Operators may be concerned that they will require the original capability at some point in the future.
- Train Operators view the proposed compensation arrangements as insufficient, in terms of the impact of the Network Change, as much as the sum itself.
- Train Operators consider that insufficient information is provided in the Notice for them to assess the impact on their services.
- Train Operators may perceive too many risks to their future business (often for large, complex, or innovative projects) and/or they believe that there are better ways of achieving the output than outlined in the proposal.

The following paragraphs outline some of the areas where we believe that there are issues which could be addressed as part of this review.

Objections based on a Train Operator's future use of the Network

Train Operators' objections to a Network Change Notice are often on the basis that a proposal 'does not adequately take account of the reasonable expectations of the Train Operator as to the future use of the relevant part of the network'.

There are instances where a Network Change seeks to remove redundant infrastructure where traffic has ceased some time ago, but where the Network Change is blocked or held up by an objection that it would reduce the capability of the network. This can occur even where the overall project impact is an improvement or enhancement but within it there are certain reductions in capability, for example junction rationalisation or the removal of a cross-over.

At present, Part G does not require the Train Operator to provide evidence that there will be a traffic requirement at some stage in the future; the objection can be based on a statement of belief. Where, as a result of an objection, capability is retained but no traffic requirement actually emerges, industry costs will have been kept artificially high by the requirement to maintain that part of the network.

Therefore, as also identified in the McNulty Report, the Train Operators' 'blocking right' (Condition G2.1.1 (a) (iv)) can be a barrier to Network Rail's ability to efficiently manage the network in accordance with its licence obligation. In this way, the use of the 'blocking right' can misalign incentives within the industry.

Network Rail believes that the 'future use' objection should be more criterion-based, and proposes that any declared expectation as to future use of a relevant part of the Network must be 'reasonable', in order for the 'blocking right' to be valid. The reasonableness test, which should be governed by appropriate timescales, might include the need for industry business justification for future use and demonstration that the expectation is likely to materialise into actual use.

The following criteria provide a possible way forward and a basis for further developing such a provision:

- Where alternative routes exist that are of the same relevant capability and with sufficient capacity for the 'prospective future use', then the objection is invalid.
- Where no services have operated at the current capability for more than 3 years, a Train Operator's objection to a proposed reduction in capability must be justified through evidence, i.e. a third party contract for the commencement of future services with sufficient specificity to justify retention of the capability in question.
- Where services have ceased within 3 years, then a Train Operator's objection claiming that there is a reasonable expectation of future use (but with no supporting evidence) would result in the Network Change being valid but suspended for a maximum of 3 years. If the 3 year period has elapsed and there is still no traffic operating at the current capability then the Network Change will be established at that date.

Separating the compensation arrangements for Network Change from the consultation arrangements

Failure to agree compensation can, in effect, operate as a further 'blocking right', even where Train Operators support the rationale for Network Change. This can also create misaligned industry incentives, preventing the implementation of Network Changes which would contribute to increased industry efficiency.

It is proposed that a new relevant Network Code Part G provision is developed which would have the effect of allowing infrastructure delivery to take place while discussions on compensation arrangements are ongoing. Clearly such an approach would need to provide sufficient assurance to Train Operators that agreement will be secured within a reasonable timescale or the necessary protection through an appeal process would be applied.

This form of compensation agreement would be subject to an escalation and dispute process, but delay in reaching agreement or a failure to agree would not hold up implementation of changes, thereby securing benefits and efficiencies which could otherwise be diluted by delays under current Part G.

A conceptually similar approach was used to facilitate the implementation of the GSM-R project, in the form of a 'Compensation Framework Agreement' (CFA). GSM-R is a multi-TOC, multi-Route project which has many stages based upon progressive geographical implementation. Therefore, for this project certain Train Operators are affected a number of years after the first Train Operators. This complexity, and the nature of implementation, resulted in Train Operators being concerned that they were being asked to withdraw Network Change objections (which largely related to uncertainty about costs and their compensation) a long time in advance of their own implementation stage, and that during such a time interval cost issues might be significantly different. A CFA was therefore implemented, which set out agreed costs, known costs and areas subject to resolution. For the areas subject to resolution, a Delivery Plan included the process for resolving them, a progress tracker and definitive timescales.

The adoption of this approach, through appropriate drafting of provisions in Part G, would enable Train Operators to secure sufficient assurance and an expectation of reasonable compensation settlements as regards the impact of such Network Changes on their business, whilst eliminating substantial project risks in terms of protracted timescales and consequentially excessive costs. The following features would also be relevant or useful within a CFA:

- Where parties were able to agree fixed costs or a compensation methodology, these would be recorded in the CFA.
- The CFA would be templated. Hence, if the parties were unable to agree fixed costs or a compensation methodology (e.g. agreed rates) and no valid objection had been made, the Network Code would provide that the parties were deemed to have entered into a CFA on the template terms.
- Where fixed costs or a calculation methodology could not be agreed the CFA would, anyway, contain a commitment to pay reasonable costs as defined in the Network Code, plus a process with timescales for costs to be agreed by.
- If after a defined period, e.g. three months, it had not been possible to agree fixed costs or a calculation methodology, then either party would be entitled to refer matters to the contractual dispute processes contained in the CFA. If this was necessary it would enable an ultimate resolution as

regards compensation but would not delay the implementation of the project.

This approach is consistent with that proposed in the Station Change consultation. ORR's Station Change consultation has proposed a Co-operation Agreement which seeks to separate financial compensation issues from the list of valid objections to a Station Change Proposal. Historically, Station Change has seen operators objecting purely on the basis of the level of financial compensation they would receive, which led to projects not progressing for financial reasons unrelated to the merits of the proposed Change. Alternatively, projects would be delayed and additional costs incurred in securing an approved change whilst protracted negotiations played out between the parties.

Objection based on not supplying "sufficient particulars"

There is regular debate with individual Train Operators about what constitutes 'sufficient particulars' (Condition G1.2).

This can result in difficulties when Train Operators object to a Network Change Notice even though there has been extensive sharing of information with Train Operators during the earlier stages of the project.

Some of the information requested on occasion by a Train Operator requires very specialist analysis, which would not seem to be an appropriate default requirement for a Network Change Notice.

Network Rail acknowledges improvements in this area could be achieved in part through closer coordination between access parties and Network Rail and by integrating Network Change more closely into its project development processes. This would help to identify, at an earlier stage, what information access parties will require within a Notice.

However, Network Rail also believes that the following revisions to Part G would be of real benefit in improving the effectiveness of handling access parties' information requirements and resolving related objections. Consideration should be given to a provision within Part G that, at an early stage of the project, places the following obligations on the parties:

- The proposer to consult with access parties on the scope of the project.
- For access parties, within a pre-determined timescale, to specify the information required for them to reasonably assess the impact on their business when asked to respond to a related Network Change.
- Where access parties object to a Network Change on the basis of insufficient information, they will be obliged to clearly specify the insufficiency in relation to their earlier Notice (above).

This approach should not add cost or time to a project, as pre-Network Change consultation is a part of current project processes. Specifying information should not incur additional costs because Part G already provides for access parties to be compensated for analysing the impact of a Network Change, so this provision could be applied to this earlier work if it was necessary to do so. The benefits should be to significantly reduce the timescales in resolving such objections, which currently can involve a number of lengthy iterations.

(2) Definition of Network Change

The definition of Network Change itself has been the cause of disputes between Network Rail and operators in the past. In particular, the meaning of the word ‘materiality’, which appears several times in the definition, has been at the heart of those disputes. The appeal to ORR of ADP40 sought to deal with this point. ORR’s Determination of the appeal describes materiality as ‘not insignificant and more than trivial’.

The definition of Network Change, and in particular the meaning of ‘materiality’, would benefit from a discussion or debate. The issue of materiality was raised during the Station Change review under the heading of ‘Financial Impact Test’ where the station party sought to apply a financial threshold test to whether a change was material enough to trigger the full industry consultation process.

(3) Amendments to Network Change proposals

Clearly there are occasions when a proposed Network Change requires amendment and Part G provides for this. However, even in cases where the amendment is not substantial, this can often result in an access party requesting the proposer to withdraw the original Network Change Notice and reissue it in its entirety.

This effectively restarts the consultation period, which can significantly extend project timescales, often to a degree which is unreasonable given the nature of the amendment.

Network Rail believes, therefore, that there is scope for making improvement to the amendment provisions in cases where the amendment does not change the overall impact of the proposed Network Change.

A possible way forward could include the specification of a simpler variation procedure whereby only amendments are ’re-consulted’. The consultation timescales associated with simple amendments could also be more proportionate, i.e. five days instead of the 30 days associated with a full Network Change consultation. This would improve the efficiency of the process, with benefits in terms of both cost and time.

(4) Consultation process and Appeals procedure

The definition of Consultation in Part G of the Network Code (Condition G1.3) does not specify timescales for representations, responses and objections to a Network Change proposal. We recognise there is a definition of 'relevant response date' in Part G, although we consider that G1.3 would benefit from further clarity in terms of timescales.

ORR's Station Change consultation has favoured a simple process, which is consistent with having similar timescales for representations and consultations so that no party misses out on making a response on the technicality of being confused as to how long it had to do so. Network Change would benefit from implementation of a similar approach.

The Appeals procedure in Part G of the Network Code (Condition G11) contains a large number of possible areas for appeal which we believe are tautologous. We believe that this whole provision could be shortened by including only section G11.1(a) and the final sentence of G11.1 which states 'that Access Party may refer the matter for determination in accordance with the ADRR'.

A similar approach to simplify the Appeals procedure in Part J of the Network Code has been approved and is due to be implemented.

Q19. Do consultees have any comments on the use of Part H? Would Part H benefit from a general update and refresh to take account of current circumstances?

Part H provides an effective framework within which parties can make the decisions about how to manage operational disruption on the network. By necessity it is non-prescriptive about the solutions to disruption issues, but it keeps the parties aligned in how they reach those solutions. Its application is usually less explicit than other Parts of the Network Code such as Part D (Timetabling) and Part G (Network Change), but it underpins the operational processes in place.

We are not aware of any areas where Part H causes obstacles to reaching those solutions, and believe therefore that it remains fit for purpose, with no obvious requirement for any revision.

Q20. Do consultees believe that Part K adds value to the contractual regime? If not, should it be reviewed or removedaltogether from the network code?

We do not believe that Part K adds value to the contractual regime and we are content to support its removal. It does not get used, primarily because provisions elsewhere in the regulatory and contractual framework encourage or necessitate the sharing of information, but also because industry relationships have matured beyond the level supposed at the time of Part K's introduction.

Q21. Do consultees feel that Part L would benefit from a general update and refresh to take account of current circumstances, including the addition of FIPs, and the opportunity taken to move TOCs using LOCs to JPIPs?

The provisions in Part L assist in the compilation of JPIPs with Train Operators, enabling a collaborative approach towards designing the plans in the most appropriate way for that particular partnership.

We are not aware of any areas where Part L causes any obstacles to reaching agreements or for effective delivery, although we believe that there would be benefit in strengthening it to encourage Operators to move towards a JPIP (or Freight Improvement Plan) if still using LOCs. This would enable a more joint approach to performance improvement, and would also increase the incentive for Train Operators to develop TOC on Self improvement initiatives.

We do not believe, at this stage, that it would be appropriate to incorporate FIPs (Further Improvement Plans) into Part L. These have been implemented recently, as a practical measure which responds to the ongoing performance issues. However, these will not necessarily be the most appropriate mechanisms to meet the industry's performance improvement requirements in the longer term.

We believe that the ability of a JPIP to address "TOC-on-TOC" improvement could be improved if Part L were to encourage a common approach to the sharing of certain elements of Train Operators' plans with one another. At present some Train Operators are content for this to happen, whereas others are uncomfortable. A common approach to sharing information would

improve operators' confidence that Network Rail is applying a consistent approach with a similar degree of challenge to each operator.

Q22. Do consultees agree that issues such as network availability and JNAPs should be incorporated into the network code?

Network Rail does not believe that it is necessary or appropriate to incorporate network availability and JNAPs into the network code at this time.

Q23. Do consultees believe that there are other parts or individual conditions of the network code that would benefit from review? If so, please saywhich, how and why. Are there any aspects of the current access contractual regime which should be incorporated into the network code?

We are content with other elements of the Network Code, and do not believe there are other elements of the access contracts which can be neatly incorporated into the Code.

Q24. Do consultees have any comment on the format, structure and content of our new application forms, and do you have any other suggestions for improving them further?

Form P section 3.1 asks for a franchised operator to state the expiry date of its franchise. This is rarely complied with. ORR should have this information from other sources and Network Rail suggests the requirement is removed.

Q25. Do consultees consider that the changes we have made to the access and network code webpages have made them more user friendly and accessible? Are there any further improvements consultees would like to see to our website (not necessarily confined to the access and network code pages)?

There have been significant recent improvements to the ORR website and these are welcomed. Finding 'live' consultations that are underway and previous track access decisions could possibly be made even easier (with fewer clicks to obtain this particular information).

Q26. Do consultees have any views on further changes which could be made to the model contracts to ensure that they remain accessible, clear, useful and fit for purpose?

Changes will be required following the decisions to be taken on Questions 2 to 5. Network Rail does not propose any other specific changes, although model clauses should remain under review on a case by case basis, for improvements and clarification, as contractual complexities arise.

Q27. Do consultees agree with our approach to allow the industry to continue to develop its own approach to the format of access contracts for access to facilities off Network Rail's network?

Network Rail is content to allow the industry to continue to develop its own approach in relation to the format of access contracts for access to facilities off Network Rail's network. Indeed, Network Rail believes that greater transparency as to how facility access charges might be calculated is more important to the industry than the form of access agreement.

Q28. Consultees are invited to provide specific examples of their experiences of Network Rail's sign-off process for applications, together with any suggestions as to how the situation can be improved.

Network Rail is keen to understand any concerns or recent experiences in relation to the Network Rail sign-off process. We can confirm that one of the reasons for the creation of the post of Freight Director is to improve service and accountability in such matters.

Q29. Consultees are invited to comment on whether Network Rail should be making more extensive use of declarations of congested infrastructure, including removing the 'congested infrastructure' label if it is appropriate to do so.

The process for identifying and responding to congested infrastructure is set out in section 4.4.3 of Network Rail's annual Network Statement. This process is designed to fulfil Network Rail's obligations under the Railways Infrastructure (Access and Management) Regulations 2005 as amended in 2009. The process has been followed consistently, resulting in three declarations in the 2008 Network Statement, but none in any other years.

Network Rail is considering how the congested infrastructure process could be integrated with the wider process for planning the capability and use of the network, and will be interested in respondents' views on this question.

Q30. Do consultees have any comments on the impact assessment,particularly in terms of:

- **any additional evidence of the current costs of the existing contractual regime, e.g. overheads, resources, legal costs; and**
- **what they consider to be the costs and benefits of the proposals?**

Network Rail would welcome further simplification of the application process or access contracts provided the necessary commercial and legal safeguards are maintained. This simplification should reduce the resources required to implement and manage these on a regular basis.

Q31. Consultees are invited to submit comments on any issues they may have which are not consideredby this document, including consultation and contractual matters, the network code, and ORR's own processes.

Network Rail has been considering the wider relationship between access rights and timetable production. Weaknesses identified in the alignment of strategic planning with capacity allocation processes could be removed if 'value assessment' is more firmly linked to capacity allocation. What we mean by this is an acceptable solution should strike a balance between (i) contractual certainty for operators (and continuity for customers) and (ii) the flexibility to recast services occasionally, so that overall value is maximised.

The recently introduced concept of managing major timetable change through a Calendar of Events and individual Event Steering Groups can, in our view, form the basis for a more joined-up approach to the staged allocation of capacity through the end-to-end process.

We propose to develop the current ESG process so that in each case it begins with a focus on the strategic context and the particular train service output goals for the 'event' it is managing. These would be taken directly from the upstream strategic planning activities, e.g. franchising or major project development, so that the purpose of the event (e.g. frequency or journey time improvements from investment in infrastructure or rolling stock) is delivered through the change process. The ESG could then assess high-level train service concepts, using techniques previously applied in RUSs, to deliver the event's goals and optimise other trade-offs against that constraint. Only then would the ESG consider specific timetable solutions.

This optimisation would benefit from extra flexibility in Track Access Contracts and could be less constrained if Network Rail gains the ability to re-open and propose changes to TACs as sought in our response to Question 2 in this consultation. In the long term, it could be possible to align Track Access Contracts with identified future events so that all access rights in the affected area terminate or become less prescriptive (i.e. constraining) at the time of the structural change. This approach would have the advantage of permitting rights to remain relatively specific in the short- to medium-term, giving a level of certainty to operators between each of the major changes and also – through the Calendar of Events – providing some certainty about the timing and scope of future major changes.

We recognise that, working with industry colleagues, we need to improve the availability of information to support these decisions, covering all the consequences of proposed service changes.

Other matters are being dealt with elsewhere including further reform of the Network Code through CRC.