



OFFICE OF RAIL AND ROAD

**Joanna Whittington**  
**Chief Executive**

Bernadette Kelly  
Director General - Rail  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London  
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12 December 2016

Dear Bernadette,

**TREATMENT OF DfT FUNDED ENHANCEMENT PROJECTS IN ENGLAND AND WALES IN CP5**

A key finding of the Bowe Review (2015) was that in the planning of CP5 enhancements there was a lack of clarity among and within DfT, NR and ORR about their respective responsibilities. You accepted all of the recommendations in the report and quickly acted on strengthening DfT and NR's joint day-to-day management of the process for planning and overseeing rail enhancements. In addition ORR and DfT started discussions on the regulatory treatment of DfT funded enhancement projects in England and Wales in CP5. I am writing to confirm the approach we have agreed as set out in the attached annex.

There is further work still to do as the treatment of enhancements in CP6 is currently being discussed as part of the ongoing periodic review of Network Rail. I look forward to following this up in due course.

Yours sincerely,

A handwritten signature in black ink that reads 'Joanna'.

Joanna Whittington

**Chief Executive**

## Annex A

### Treatment of enhancements in CP5

As the major funder of enhancements on the mainline network and with accountability for their value for money, DfT decides how to commission and fund enhancements in England and Wales.

The ORR has statutory duties to protect the interests of users of the network, funders and railway businesses, and to promote the development and use of the network.

There are substantial interactions between DfT's role in specifying enhancements and ORR's roles as economic and safety regulator. DfT and ORR share interests in:

- ensuring that all rail enhancements are safe;
- securing value for money and efficiency in enhancement projects and their associated impact on the wider network; and
- ensuring that enhancements are delivered with the minimum necessary disruption to users of the network.

The Secretary of State also has a customer role with regard to NR which is separate from its role as shareholder. Broadly, the Secretary of State as customer:

- acts as a client of NR and funder for enhancement schemes (although NR – and not the DfT – will be the client in relation to all enhancement schemes for the purposes of the Construction (Design and Management) (CDM) Regulations 2015)<sup>1</sup>; and
- has agreed a MoU with NR for the enhancements framework that sets out how the DfT and NR will work together. The document will be updated as necessary.

A key finding of the Bowe Review (2015) was that in the planning of CP5 enhancements there was a lack of clarity among and within DfT, NR and ORR about their respective responsibilities, despite these roles being set out in legislation. It goes on to report that this was exacerbated by inconsistent communication between the organisations, allowing misunderstandings to persist. The Secretary of State accepted all of the recommendations, and quickly acted on strengthening DfT and NR's joint day-to-day management of the process for planning and overseeing rail enhancements, providing clearer accountability for associated costs and project management. These measures reset the formal framework and are underpinned by the published MoU between DfT and NR.

The delays and cost increases on some of NR's projects in 2015 prompted a review by Sir Peter Hendy, the Chair of NR, who made proposals to put the rail enhancements programme in England and Wales back on a sustainable footing. The Secretary of State for Transport accepted Sir Peter's recommendations, subject to a period of consultation with stakeholders. That consultation did not identify any superior alternative to Sir Peter's plan. The Secretary of State has therefore accepted the plan.

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<sup>1</sup> The Construction Design and Management Regulations 2015 will apply directly to the body responsible for specifying outputs.

## Efficient costs in Control Period 5

Continuing with the current cost review process in England and Wales led by ORR (the Enhancements Cost Adjustment Mechanism 'ECAM') would cause confusion between an ECAM-determined baseline and the project cost forecasts set through the Hendy replan, and would therefore be inconsistent with the Bowe review recommendations in terms of clarity of roles. We have agreed that ECAM will be discontinued and for the remainder of CP5 efficiency and affordability will be determined by DfT as an outcome of the following:

- the improved client and supplier relationship between DfT and NR covered by their specific enhancements MoU;
- the benefits from NR's cost planning improvement plan achieving improved consistency and capability in its cost estimating and risk evaluation;
- NR addressing the recommendations set out in the independent assurance report, published alongside the Hendy report;
- determining value for money through business case investment decisions;
- independent (external) challenge of NR's cost estimates on a case by case basis, which will be overseen by DfT, as was the case with Thameslink through its protocol arrangements, and could be procured either directly by DfT or by NR on DfT's behalf.

## Monitoring in Control Period 5

It is a fundamental part of the ORR's role to hold NR to account for the delivery of the regulatory outputs set in PR13. The enhancement projects are one part of that overall framework and:

- ORR has a licence enforcement role in this area;
- the monitoring of the delivery of enhancement projects needs to be consistent with the PR13 framework that set out the rules for how ORR would hold NR to account;
- the monitoring of the delivery of enhancement projects needs to be consistent with how other outputs are monitored by ORR, especially given the complexity of the issues that are currently being discussed in relation to NR's performance against the outputs framework; and
- given the sensitivity of enhancement projects it is better that an independent body comments on the delivery of the project outputs (e.g. whether it has been delivered in accordance with the agreed milestones) rather than the organisation that initiated the project (ORR will therefore monitor regulated milestones in line with their regulatory duties).

ORR will continue to monitor delivery against the published delivery plan and report on progress. The progress reports will be in the twice yearly 'Network Rail Monitor'.