

## HAL 2<sup>nd</sup> iteration Responses to TFL Consultation – November 30<sup>th</sup> 2015

Content	TfL Comments	HAL initial response and associated amendments	HAL Response November 2015
<b>The Deed of Undertaking</b>	<p><b>2.1</b> “HAL has been subject to the Rail Regulations 2005 since they were promulgated in November 2005. It should therefore already have in place (among other things) a separation between infrastructure manager and operator, a Network Statement, and a charging framework. HAL’s assertion that it agreed to be bound by the Rail Regulations only by virtue of the Deed of Undertaking is wrong: HAL cannot agree whether or not to be bound by the law.”</p> <p><b>2.2</b> “The current unsatisfactory state of affairs arises because of HAL’s disregard for those obligations, but also because of its breach of the terms of the Deed of Undertaking which envisages a two stage consultation process, such that the draft Network Statement would be provided to the ORR for comment, and the ORR would “confirm” the charging framework and specific charging rules some <i>11 months</i> before the “Implementation Date” (currently 31 August 2015, pursuant to the Deed of Amendment). This two stage process recognises the complexity of the issues and the need for early and proper consultation. HAL has simply ignored the law and</p>	<p>A schedule was agreed with the DfT and the ORR and has been completed.</p> <p>Refer to letter; From Simon Earls to Howard Smith 23<sup>rd</sup> July 2015 &amp; 31<sup>st</sup> July 2015 reference: Heathrow Airport Limited (HAL) Moving to a regulated railway consultation</p>	<p>No further response - CLOSED</p> <p>No further response - CLOSED</p>

	its undertakings and has failed to engage in the process in a meaningful or constructive way. The result is, not to put too fine a point on it, a mess.”		
<b>The ORR/CAA Jurisdiction</b>	<p><b>3.1</b> “HAL’s proposals, in so far as it is possible to understand them, appear to result in the CAA exercising a regulatory jurisdiction in respect of access charging for the Heathrow Infrastructure, in particular since the infrastructure is intended to remain on the Airport RAB, with the remuneration of capital investment and recovery of on-going operating costs to be established by the CAA as part of the airport “periodic review” process.”</p> <p><b>3.2</b> “This is plainly ill-considered, to the extent that it has been considered by HAL at all. The Heathrow Spur is rail infrastructure and subject to the Rail Regulations 2005, and must be subject to regulation (including the charging framework and review of charges) by the ORR, not the CAA. HAL’s proposals require fundamental recasting to reflect the proper regulatory position.”</p>	ORR is the regulatory body with respect to rail matters	No further response - CLOSED
<b>The Investment Recovery Charge</b>	<p><b>4.1</b> “A significant (in monetary terms) element of HAL’s proposed charging framework is the “Fixed Track Access Charge”, which is, in fact, an Investment Recovery Charge, to which HAL claims to be entitled as an exception to the charging principles of the Rail Regulations 2005.”</p> <p><b>4.2</b> “In order to recover its investment costs as part of the charges to users of the infrastructure</p>	<p>HAL has already discussed long term costs with the Joint Sponsor Team and the ORR. Heathrow has no plans to change its proposals, subject to further ORR determination.</p> <p>Heathrow has submitted a further paper explaining its position to the ORR.</p>	<p>No further response – CLOSED</p> <p>No further response – CLOSED</p>

	<p>in return for access, HAL must show that (i) the project increases efficiency or cost-effectiveness and (ii) that the Heathrow Infrastructure could not have been built without the prospect of those charges.”</p> <p><b>4.3</b> “TfL remains to be persuaded that HAL can satisfy the first of these tests (and HAL has made no proper attempt to do so thus far). Indeed, HAL has not even set out what it means by the terms “cost effective” and “efficient”; the perspective from which these should be assessed; and how the “project” meets the criterion.”</p> <p><b>4.4</b> “But more critically, TfL thinks it is extremely unlikely that HAL will be unable to demonstrate that the second limb is satisfied. The justification thus far provided by HAL, such as it is, points to the opposite conclusion. It is therefore not surprising to find that in 2006 BAA wrote to the DfT providing indicative costs for access to its network and explicitly stated that it did not envisage such costs including a charge for recovery of historic investment, a position adopted and repeated by HAL as recently as October 2012. Indeed, recovery of historic investment costs was not proposed by HAL until early in 2015, and has all the appearance of an afterthought, with an eye to commercial advantage.”</p>	<p>HAL strongly objects to any reliance on two ‘without prejudice’ letters in 2006. Those letters were generated in the course of negotiations between HAL and DfT relating to Crossrail. The purpose of marking letters ‘without prejudice’ is so that they cannot be deployed by either party in opposition to the other unless the negotiation results in an agreement, in which case it is that agreement that can be enforced. No evidence has been provided to show that HAL’s present position in relation to track access charges breaches any agreement that had been reached.</p>	<p>No further comment – CLOSED</p> <p>No further response - CLOSED</p>
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<p><b>Other Charges</b></p>	<p><b>5.1</b> “The calculation of the proposed charges for access (IRC and otherwise) are flawed anyway. The detail is beyond the scope of an executive summary, and is set out further below. For present purposes it is sufficient to note that as currently envisaged, no account is taken in the charging regime of (for example) the relative characteristics of trains operating on the infrastructure; of the actual infrastructure that will be used; of the incidence of volume risk; of potential “cross subsidy” from rail operators to airlines; and of separation of track and station charging. Finally, it appears that HAL proposes to give itself full and unfettered rights to amend the access charges.”</p>	<p>Repeated elsewhere in the document</p>	<p>No further response - CLOSED</p>
<p><b>The Network Code and The Network Statement</b></p>	<p><b>6.1</b> “As currently drafted, HAL’s proposed Network Code and Network Statement are, to put it generously, works in progress: they are incomplete, internally contradictory and fail to meet basic requirements of the Rail Regulations 2005 and, more generally, a safe, transparent and fair framework for access to railway infrastructure. In addition, the proposals are inherently discriminatory, since they appear to treat HEOC more favourably than other applicants. It appears that HAL has not fully understood the nature and extent of the obligations and duties of an infrastructure manager within the context of the Rail Regulations 2005, or the complexity and</p>	<p>Any discrimination is unintentional and where found, will be amended accordingly.</p>	<p>Further advice has been sought through HAL independent experts as well as further engagement with rail industry through workshops. The regulation documents will be updated, where appropriate, as soon as HAL completes the current review - CLOSED</p>

	sophistication of the documentation required to set out those obligations and duties.”		
<b>INADEQUACY OF CONSULTATION</b>			
<b>Basis of HAL’s Consultation</b>	<p>9.2 “Schedule 2 of this response sets out a list of information which TfL requires in order to be able to comment fully and fairly on HAL’s proposals. In summary, HAL should have, but has not, provided the following:</p> <p>9.2.1 <b>Consultation paper:</b> a consultation paper or document setting out the basis of consultation – including an explanation of some of the main provisions contained in the consultation documents, how those provisions were arrived at and what questions the consultees are being consulted on. Such a consultation paper is essential for consultees and would usually give helpful background and understanding on the basis of and reasons for the Consultation.</p> <p>9.2.2 <b>Clarification question process:</b> a process by which TfL can raise questions as part of the Consultation - HAL has not done this; and</p> <p>9.2.3 <b>Timetable:</b> a Consultation timetable that HAL intends to follow in order to finalise the regulated arrangements. TfL considers that HAL should issue a timetable from the end of the period of the Consultation until implementation of the arrangements, including the subsequent consultations proposed in the Extension Response. TfL reserves the right to appeal to ORR</p>	<p>HAL has completed its consultation and complied with its obligation. In addition, supporting detail was provided during 2015 to TfL.</p> <p>Should TfL have further, specific questions to raise, HAL will, of course, provide further consideration.</p>	<p>A plan of actions HAL is currently working through has been issued and is being actively managed with Sponsors - CLOSED</p>

	<p>under regulation 29 of the Rail Regulations 2005 in respect of any matter contemplated by the Consultation or otherwise challenge HAL’s proposals or conclusions.</p> <p>9.2.4 <b>Supporting Information:</b> evidence in support of HAL's proposals in relation to charging, amongst other things.”</p> <p><b>9.3</b> “HAL is obliged as a matter of law to comply with the requirements 9.3 of the Rail Regulations 2005: as currently drafted, HAL's proposals fall short of that obligation in numerous, and in many cases fundamental, respects. A proper consultation process could have remedied many, if not all, of the deficiencies in HAL's proposals.”</p>		
<p><b>Advent of Crossrail</b></p>	<p><b>10.1</b> “The Letter (and related information on the HAL website) asserts that it is the commencement of the Crossrail passenger services in 2018 that places certain obligations on HAL as the owner and operator of the Heathrow Rail Infrastructure. This is not correct. HAL has been bound by the Rail Regulations 2005 since they came into force in November 2005. This arose out of changes to European law that were implemented into English law by the Rail Regulations 2005 and not by the advent of Crossrail. No exemption is possible from the Rail Regulations 2005.”</p> <p><b>10.2</b> “Further, TfL considers that HAL has been</p>	<p>HAL is bound by the Deed of Undertaking and understands its legal obligations.</p> <p>2.1 refers</p>	<p>No further response - CLOSED</p>

	<p>aware of the need to put in place requirements to meet the Rail Regulations 2005 since at least 2006 (and should have been aware of this requirement from an earlier date given it is an operator of railway infrastructure). In addition, TfL understands, HAL was originally working to a timetable of 2013 to introduce arrangements to ensure compliance with the Rail Regulations 2005.”</p>		
<p><b>Obligations under the Rail Regulations 2005</b></p>	<p><b>12.1</b> “HAL implies in the Letter (and on its website) that, in order to satisfy its regulatory requirements, it has to complete 2 key tasks: (i) issue a Network Statement; and (ii) issue a Network Code. HAL goes on to imply that any other documents it has issued are being issued voluntarily and that HAL would not otherwise be obliged to publish them but for the advent of the Crossrail services. TfL notes that:</p> <p>12.1.1 the obligations set out in the Rail Regulations 2005 are much broader than the current Consultation. Further, the Deed of Undertaking also envisages wider compliance with the Rail Regulations 2005 than HAL is demonstrating in the Consultation. TfL raises deficiencies in the Consultation elsewhere in this response but, in summary, TfL considers that HAL should as a minimum be:</p> <p>(a) providing more detail as to how access to services will be established in accordance with the Rail Regulations 2005 (regulation 7 in</p>	<p>Repeated elsewhere in the document</p>	<p>Further advice has been sought through HAL independent experts as well as further engagement with rail industry through workshops. The regulation documents will be updated, where appropriate, as soon as HAL completes the current review - CLOSED</p>

	<p>particular);  (b) demonstrating compliance with the separation and business planning requirements contained in regulations 9 and 10 of the Rail Regulations 2005 (particularly given HEOC is described as a wholly-owned subsidiary of HAL in the HAL Network Statement);  (c) providing substantiating information to support its proposals – the charging proposals in particular – in order that ORR can determine the charging framework as required by regulation 12 of the Rail Regulations 2005;  (d) setting up a performance scheme as required by regulation 14 of the Rail Regulations 2005; and  (e) establishing rules for the allocation of capacity as required by regulation 16 of the Rail Regulations 2005.</p> <p>These requirements go far beyond issuing the HAL Network Statement and the HAL Network Code; and</p> <p>12.1.2 in any event, certain documents which HAL has not provided are referenced within the documents which it has provided. In order for consultees to make an informed consultation response, receipt of those documents is essential. Indeed, TfL notes in Schedule 2 that there are many other referenced documents which are missing and which would be required to enable a comprehensive response to be given, to allow the</p>	<p>Demonstrated to the satisfaction of the ORR</p> <p>Submitted to ORR, subject to determination</p> <p>Included in current TAC's</p> <p>As described in HAL Network Statement – review further</p>	
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	establishment of the charging, regulatory and contractual framework (which are interdependent) for the Heathrow Rail Infrastructure.”		
<b>Extension of time</b>	<p><b>13.3</b> “HAL did not respond to that letter within the week in which TfL requested a response. Indeed, it took HAL over two weeks (until the penultimate week of the period of the Consultation) for HAL to issue the Extension Response indicating that an extension would not be granted. TfL considers this delay to be unreasonable and reflective of HAL’s attitude to the Consultation (and the pre-engagement). In particular, TfL disagrees with the assertions made by HAL in the Extension Response that:</p> <p>13.3.1 it has provided a significant amount of information to allow TfL to better understand its proposals. Key information requested by TfL to allow it to understand HAL's proposals has not been provided, either as part of the pre-consultation engagement or as part of the Consultation itself;</p> <p>13.3.2 stakeholders will be well versed on the form and operation of the documentation issued as part of the Consultation as they are based on pro formas. Many ill-considered changes and deletions have been made by HAL to the Documentation and indeed HAL did not provide a comparison against the Network Rail forms as</p>	<p>HAL verbally advised they were not minded to provide an extension much earlier and continued to give further consideration hence the delay in a written response. Due to internal commitments, predominantly the separation of the Infrastructure Owner and Train Operator programme, it could not be easily achieved</p> <p>HAL asserts again that much financial information was provided as well as drafts of the Network Statement and Network Code prior to the consultation. We would remind TfL that no such exchange regarding the Crossrail proposition was forthcoming</p>	<p>Further advice has been sought through HAL independent experts as well as further engagement with rail industry through workshops. The regulation documents will be updated, where appropriate, as soon as HAL completes the current review - CLOSED</p>

	<p>part of the Consultation. Further changes are also required to reflect the circumstances of the Heathrow Rail Infrastructure. This means the Documentation is fundamentally different to the Network Rail contract documents and in any event remains inappropriate in many respects for use of the Heathrow Rail Infrastructure because:</p> <p>(a) HAL has proposed certain unsuitable changes to the Network Rail contract documents; and</p> <p>(b) given the nature of the Heathrow Rail Infrastructure, HAL should have proposed further changes to certain parts of the Network Rail contract documents; and</p> <p>13.3.3 TfL will have opportunities to respond to subsequent consultations. In the Consultation, HAL appears to be proposing the Documentation as the basis of the contractual framework for use of the Heathrow Rail Infrastructure and there has been no suggestion of any further consultation.</p> <p><b>13.4</b> “TfL remains of the view that an extension of the Consultation 13.4 would have been appropriate. Unless substantial amendments are made to HAL’s proposals, TfL will have no alternative but to appeal under regulation 29 of the Rail Regulations 2005. TfL invites HAL to reconsider its proposals in light of TfL’s comments set out in this response.”</p>	<p>As and when required, HAL will issue further consultation proposals to the industry and TfL will be invited to participate</p>	
<b>JURISDICTION</b>			

<p><b>Access Charges Jurisdiction – the risk of double recovery</b></p>	<p><b>16.1</b> “TfL understands that HAL intends to continue to establish the revenue requirement associated with the Heathrow Rail Infrastructure on the same basis as it has done since the start of HAL’s third control period, or quinquennium, in 1997. In principle, TfL would have no objection with this approach <b>if</b> the other arrangements for meeting that revenue requirement also continue. This means that airline aviation charges (net of the operating surplus received from the HEOC services) should continue to fund the Heathrow Rail Infrastructure.”</p> <p><b>16.2</b> “Rail access to the airport offers not only the fastest route to central London but is the most environmentally acceptable mode. This results in rail access being compatible with planning and other statutory requirements and allowed the airport to expand. It is therefore the airport and the airlines which are the ultimate beneficiaries of the Heathrow Rail Infrastructure and it is therefore appropriate they should be responsible for the construction costs of the Heathrow Rail Infrastructure.”</p> <p><b>16.3</b> “Payment of the construction costs of the Heathrow Rail Infrastructure by the airlines is wholly consistent with the Rail Regulations 2005, which provide that the cost of the “minimum access package” <i>shall be set at “the cost that is</i></p>	<p>HAL arrangements have been concluded and there are no plans to amend the principles, subject to ORR determination</p>	<p>No further response - CLOSED</p>
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	<p><i>directly incurred as a result of operating the train service”. Such costs can only be established by ORR as they relate to the operation of a particular train service – so would not form part of the CAA’s determination in respect of airport charges. The result would be that airport users continue to pay the same aviation fees and HAL would continue to be responsible for the fixed Heathrow Rail Infrastructure (funding it from those aviation fees) as they would at present have done for 18 years. Nevertheless, airport users and HAL would benefit from the increased amenity and connectivity of additional services (including Crossrail) with such train service provider paying the additional costs which are directly incurred through the operation of its service.</i></p> <p><b>16.4</b> “TfL acknowledges that the introduction of Crossrail services will have an adverse impact on HEOC farebox revenues and thus indirectly on the net revenue requirement to be recovered through airport charges, if left unadjusted. However, TfL notes that the contribution made by HAL to the DfT in connection with the introduction of the Crossrail services was reduced from the figure of £180m in 2008 prices (approximately £230m in current prices) to £70m (in February 2014 prices) to compensate HAL for this forecast reduction in HEOC income. The</p>	<p>Noted. Reduction in contribution was directed by the CAA.</p>	
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	<p>projected reduction in revenue has therefore already been taken into account and any further adjustment in the context of charges to be levied on users of the Heathrow Rail Infrastructure would result in HAL securing double recovery of projected reductions in farebox revenue.”</p>		
<p><b>Access charges jurisdiction - investment recovery charge</b></p>	<p><b>17.1</b> “HAL proposes levying an investment recovery charge (by way of the FTAC) using the exceptions to the general charging principles set out in schedule 3 of the Rail Regulations 2005. The FTAC is very significant in amount (approximately £34 million per annum (2015 prices) for the proposed Crossrail service pattern based on the price of £597 per “movement” set out in the HAL Network Statement) which can only result in an equivalent reduction in airport charges or surplus accruing to HAL shareholders, or some combination thereof. This is particularly the case as the Crossrail services will be introduced prior to the expiry of the current quinquennium.”</p> <p><b>17.2</b> “Under HAL's proposals, this FTAC will effectively be set by the CAA outside the rail regulatory framework and “imported” into the charging framework established under the Rail Regulations 2005. These charges are in effect unregulated because they are not established or determined by ORR, but instead would result from assumptions made by the CAA about</p>	<p>No surplus can occur under the regulatory arrangements that HAL are subject to</p> <p>ORR is the regulatory body with respect to rail matters</p>	<p>No further response - CLOSED</p>

	<p>income derived from railway income, which would form part of HAL's other single till income, which would in turn be used to reduce HAL's revenue requirement and reduce landing charges. The CAA has no locus in the matter of rail access charges to be incorporated into the charging framework. ORR has the expertise, experience and duty to establish such charging framework.”</p> <p><b>17.3</b> “Price determinations in respect of rail access charges statutorily cannot be made by the CAA, only by ORR. However, HAL’s proposed structure requires ORR to accept the outcome of the CAA’s determinations (rather than consider and reach its own view). Accordingly, the CAA establishment of the charges would not meet the requirements of the Rail Regulations 2005 and would undermine the objective of those regulations which seek to establish a fair, transparent and non-discriminatory charging framework. The physical assets comprising the Heathrow Rail Infrastructure must be taken outside of the Airport RAB (where the CAA has jurisdiction) and ring-fenced in a Rail RAB over which ORR has jurisdiction. However, the capital recovery of such assets should remain within the Airport RAB.”</p>	<p>17.2 refers</p>	
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	<p><b>17.4</b> “This would need to be underpinned by an independent audit to ensure:  17.4.1 there is no mismatch between the assets falling within the Airport RAB and the assets falling within the Rail RAB;  17.4.2 that the physical assets transferring are appropriate; and  17.4.3 to the extent any charges include remuneration of capital investment, the initial book and depreciated/indexed values of the physical assets are accurate.  In discussions with ORR, HAL would then need to establish relevant policies in relation to matters including asset life, approach to amortisation and rate of return.”</p> <p><b>17.5</b> “Of course, in any event, the imposition of an investment recovery charge would still need to satisfy the criteria set out in schedule 3 of the Rail Regulations 2005 for it to be permitted. For the reasons set out in elsewhere in this response, TfL does not consider that either limb of the test is met and the imposition of such a charge would be unfair and inconsistent with ORR’s duties under the 1993 Act.”</p>	<p>ORR will determine the audit schedule in line with their regulatory obligations</p> <p>HAL remains in disagreement</p>	
<p><b>Access charges jurisdiction – regulatory policies</b></p>	<p><b>18.3</b> “Regulators regularly set efficiency targets which inevitably will vary over time and by sector. It is possible that the rail industry may for instance move to a CPI basis of indexation, while TfL is not aware of CAA policy in this regard. The</p>	<p>3.1 refers</p>	<p>No further response - CLOSED</p>

	<p>impact of such divergence is unclear and charges established within the structure proposed by HAL (i.e. by the CAA) are open to challenge and to the prospect of under or overrecovery. In general, such anomalies will favour HAL because the infrastructure manager has both the detailed information and knowledge of both regulatory regimes to take commercial advantage of such anomalies.”</p>		
<p><b>Jurisdiction – practical arrangements</b></p>	<p><b>Assets</b>  <b>19.1.1</b> “TfL considers the structure proposed by HAL to be opaque in terms of the assets which form the basis of the charges to be levied on rail operators and the assets which form the basis of the charges to be levied on airport users. TfL considers it essential for there to be clear delineation between the two, which has not been provided by HAL. In the absence of a clearly delineated and ring-fenced rail infrastructure under the oversight of ORR, there is real potential for interface assets (whether discrete, such as escalators or systems such as public address, ventilation or fire control) to be misallocated for cost and charging purposes. This leads to the possibility of double counting and over-recovery by HAL from rail operators.  <b>19.1.2</b> TfL considers that the Heathrow Rail Infrastructure should be in the oversight of a single regulator (which can only be ORR) with the airport assets being separated out and under the</p>	<p>3.1 refers</p> <p>Evidence has been submitted to the ORR to</p>	<p>No further response - CLOSED</p>



	<p>jurisdiction of the CAA. A clear delineation will in any event be required both under ROGS and the relevant access contracts.”</p> <p><b>Terms of access</b></p> <p><b>19.2.1</b> “Access charges are paid in exchange for infrastructure access. Infrastructure access is intended to be granted by HAL on specific terms for particular payments. TfL considers that unless ORR is responsible for establishing the charging framework (and the specific charges made as part of that) it cannot effectively consider appeals in relation to that framework – or the terms of access.</p> <p><b>19.2.2</b> Under the terms of the Exemption Order, HAL enjoys an exemption from both the access and licensing regimes under the 1993 Act. This means that standard terms (model clauses), asset stewardship and performance obligations need to be dealt with contractually rather than by way of a network licence. The only effective way of addressing a grievance in relation to the terms of access is under regulation 29 of the Rail Regulations 2005. However, under HAL’s proposal, it will be the CAA (and not ORR) which determines the quantum of charges payable for access to the Heathrow Rail Infrastructure. As access charges and terms of access go hand-in-hand, under HAL’s proposal, ORR’s jurisdiction in</p>	<p>cover all aspects of the HAL access charges and is subject to ORR determination</p> <p>3.1 refers</p> <p>3.1 refers</p>	
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	<p>relation to appeals will be fettered in relation to non-charge related terms because it will have no right to adjust access charges, for instance in relation to the standard of performance.</p> <p><b>19.2.3</b> The structure proposed by HAL is also unworkable in the context of “change”, with the proposed contractual framework having multiple defects in this regard, as set out below. The promotion of beneficial change (to infrastructure, rail vehicles or operations, including documentation) is needed through specific contract provisions (which preclude one party from overriding the wishes of others whilst simultaneously not unduly fettering the wishes of others) and is a critical element of the rail industry structure. This concept has been largely lost in HAL’s proposed structure and the nexus with charges severed. The intent of HAL’s proposals appears to be to replicate the national rail industry approach, which culminates in disputes going to ORR. Often, such a dispute affects or relates to charges (for instance where one operator’s change requirements necessitate higher operational expenditure or investment). If charges are being determined by the CAA, this is likely to be a fetter on ORR in the performance of its functions in relation to disputes.”</p>		
<p><b>FIXED TRACK ACCESS CHARGE</b></p>			

<p><b>Schedule 3 of the Rail Regulations</b></p>	<p><b>21.2</b> “As noted in paragraph 9.2 above, HAL has not provided any explanation of the approach which it has taken to the proposed charging, regulatory and contractual framework, and in particular has made no attempt as part of the Consultation to justify the imposition of the FTAC. 21.3 TfL has separately considered a paper prepared by HAL in May 2015, entitled “Heathrow Railway Infrastructure – Charges Information Paper” (not submitted as part of the Consultation) which seeks to justify the imposition of the FTAC. TfL has considered the arguments advanced by HAL to justify the FTAC, as set out below. Before dealing with the detail, TfL observes that:</p> <p>21.3.1 The imposition of an investment recovery charge operates as an exception to general charging principles;</p> <p>21.3.2 The burden is on the infrastructure manager seeking to impose such charges to justify them;</p> <p>21.3.3 <i>Both</i> limbs of the test in schedule 3 must be satisfied before such charges can be imposed;</p> <p>21.3.4 TfL is far from satisfied at present that the project can be shown to have increased the efficiency or cost-effectiveness of the railway generally (nor even of the airport or wider benefits across society); and</p> <p>21.3.5 TfL regards HAL’s prospects of establishing that <i>but for</i> the prospect of levying higher access</p>	<p>HAL asserts again that much information was provided prior to the consultation including the approach rationale</p> <p>4.1, 4.2 refers</p>	<p>No further response - CLOSED</p>
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	charges in respect of long term costs of the project for access to the infrastructure, the project <i>could not</i> have been undertaken as vanishingly small. Other than broad assertions about investors requiring return on capital, HAL has made no effort to satisfy this test.”		
<b>The project must increase cost efficiency or cost-effectiveness</b>	<p><b>22.1.2</b> “There are a number of points to be made about this.</p> <p>(a) HAL does not anywhere explain what the actual "relatively higher charges" that it implies are currently being levied are. This is important, for a number of reasons. TfL does not accept, for example, that whatever charges are currently being levied include any form of IRC, in which case HAL's position in relation to this limb is undermined.</p> <p>(b) HAL in fact only identifies one reason why “relatively higher charges” increase efficiency, and that is that it reduces the debt burden on funders, making it more likely that projects will be built, which increases the overall benefit to society (which HAL describes as “the measure of efficiency most relevant in the context of rail infrastructure”). In reality, of course, for a regulated business like HAL, the level of charges is not the key driver of the cost of the project; rather the cost of the project drives the level of the charges and the debt and equity finance that is required.</p> <p>(c) The second reason identified by HAL (“<i>this in</i></p>	4.1 refers	No further response - CLOSED

	<p><i>turn influences whether a project proceeds") is fundamentally flawed for at least two reasons. First, this is a point which is anyway of relevance to the second rather than the first "limb". Second, and most crucially, we do not believe that the prospect of rail access charges which are higher than directly incurred cost either: (i) was (as a matter of fact) a factor in the decision to proceed with the project; or (ii) would have been (as a matter of theory and evidence) a factor in the decision to proceed with the project. With regard to the former, we refer elsewhere in this submission to statements by HAL which suggest that they had no intention of levying an IRC or equivalent. <b>With regard to the latter, we have carried out some preliminary analysis which shows that the full economic cost of the rail infrastructure could be (and could have been) recovered through a very modest increase in airline charges with only a very marginal reduction in demand for flights to and from one of the world's largest, busiest and most capacity constrained airports."</b></i></p> <p><b>23.1</b> "TfL believes that it is for HAL to explain why it believes this limb is satisfied, but is far from convinced that this will be possible. In doing this, HAL should define (in a way that they have abjectly failed even to attempt): what "cost effectiveness" and "efficiency" means; from</p>	<p>There is no justification for air passengers subsidising rail passengers as you suggest as this would clearly distort competition between the operators of the various modes of surface access to the airport.</p>	
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	<p>whose perspective it should be assessed; what the "project" actually is; and how the project performs against the criterion.</p> <p><b>23.2</b> By way of simple illustration of why this is important, while the infrastructure might well improve efficiency and cost effectiveness from the perspective of HAL and the passengers which use the HEOC "express" services (and Heathrow airport more generally), the same cannot be said for passengers who use other rail services which run into London Paddington who lose out as a result of the HEOC "express" services benefitting from fixed clockface departures and dedicated platforms at London Paddington station. This is evidenced in Network Rail's 2011 London and South East Route Utilisation Strategy.</p>		
<p><b>The project could not otherwise have been undertaken</b></p>	<p><b>24.1.2</b> "Those assertions are the full extent of HAL's attempts to satisfy the test in subparagraph (2)(b). Leaving aside the fact that there is absolutely no evidence provided to support them, TfL notes the following:  (a) There is no evidence that whatever funding arrangements were in place, they required a return from higher charges for access to the infrastructure on the basis of the long term costs of the project, without which the project <i>could not</i> go ahead.  (b) There is no explanation as to what funding arrangements were available, or used, and the</p>	<p>4.1, 4.2 refers</p>	<p>No further response - CLOSED</p>

	<p>part that the prospect of higher charges played in those arrangements.</p> <p>(c) There is no evidence that the funders have not already recovered their costs: if they have, then there is no basis for any further charges.</p> <p>(d) There is no evidence that HAL have <i>ever</i> charged an investment recovery charge to HEOC, whether on the basis now proposed or at all, which it will have had to have done if it is to satisfy subparagraph (2)(b). Indeed, there is no evidence that HAL intends to charge the investment recovery charge (if established) to HEOC going forward.</p> <p>(e) There is no certainty that the proposed investment recovery charge would not result in an over-recovery by HAL.</p> <p><b>24.1.3</b> It is plainly not sufficient simply to assert that, as a matter of definition, funders are unlikely to invest unless they receive a return. The purpose of the test in sub-paragraph (2)(b) is to permit higher charges to be levied against those who wish to access the infrastructure <i>only</i> where the very existence of the infrastructure was conditional on the payment of such charges. It is not simply to allow the funders to seek to recover a return that was never contemplated simply because they have made an investment, and investments by definition make returns. If access to the infrastructure is desired, but the</p>		
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	<p>infrastructure could only have been built if users pay higher charges, then it is reasonable and fair to require users to pay, but not otherwise.”</p> <p><b>25.3</b> “TfL cannot see how the coming into effect of the Rail Regulations 2005 changes this position. There remains an advantage for airlines (as the beneficiaries) contributing towards the capital costs of investment in the Heathrow Rail Infrastructure through the airport landing charges. Nothing has changed. The FTAC has not been paid by users of the Heathrow Rail Infrastructure since the coming into force of the Rail Regulations 2005. It appears that HAL is now seeking to levy this charge simply because there is the prospect of a non-affiliate using the Heathrow Rail Infrastructure. TfL considers this to be discriminatory.</p> <p><b>25.4</b> At the time of investing in the Heathrow Rail Infrastructure, there was no realistic prospect of the Crossrail passenger services being introduced. This cannot therefore have been taken into account in making the investment decision. Indeed, at the time of investment, only the HEOC express services were envisaged and so it is only on this basis that the investment decision could have been made (the “Heathrow Connect” stopping</p>		
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	<p>service being introduced six and a half years after the commissioning of the Heathrow Rail Infrastructure).</p> <p><b>25.5</b> As stated above, PricewaterhouseCoopers LLP has carried out some preliminary analysis on TfL’s behalf which shows that the full economic cost of the rail infrastructure could be (and could have been) recovered through a very modest increase in airline charges with only a very marginal reduction in demand for flights to and from one of the world’s largest, busiest and most capacity constrained airports.</p> <p><b>25.6</b> BAA (through a senior representative with rail responsibility) indicated on a number of occasions in a number of letters that it would not be seeking to levy a charge to recover historic investment as part of its access charges<sup>4</sup>. Ultimately, the airport and the airlines are the beneficiaries of the Heathrow Rail Infrastructure. TfL relied upon these representations when developing the Crossrail business case. The exchange of correspondence from BAA is set out in Schedule 3.</p> <p><b>25.7</b> This limb of the test cannot therefore be satisfied by HAL. The construction of the Heathrow Rail Infrastructure:  25.7.1 would have been undertaken in any event;</p>		
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	<p>25.7.2 without higher track or station access charges ever being envisaged; and</p> <p>25.7.3 with multiple assurances from a senior representative of BAA being given to TfL of this fact.</p> <p><b>25.8</b> This means HAL is not entitled to levy the FTAC under the Rail Regulations 2005.”</p>		
<b>HAL cannot satisfy exception</b>	<p><b>26.1</b> “TfL has outlined above that HAL cannot justify higher access charges based on the "specific investment project" exception in the Rail Regulations 2005.</p> <p><b>26.2</b> “HAL is therefore not in a position to satisfy the exception to the general charging principles set out in paragraph 3 of schedule 3 of the Rail Regulations 2005. HAL (as infrastructure manager) will therefore be required to comply with the general charging principles relating to access under the Rail Regulations 2005 and set its access charges <i>"at the cost that is directly incurred as a result of operating the train service"</i>.</p>	4.1 & 4.2 refers	No further response - CLOSED
<b>Abuse of dominant position</b>	<b>27.1</b> “TfL considers that HAL’s proposals for an investment recovery charge would constitute an abuse of its dominant position as the infrastructure manager of the Heathrow Rail Infrastructure. More detailed commentary on this point is set out in Part 10.	Repeated elsewhere in the document	No further response - CLOSED
<b>Determination</b>	<b>[see 28.1 – 28.4]</b>		

<b>by the ORR – duties under Section 4 of the Railways Act 1993</b>			
<b>CHARGING ARRANGEMENTS</b>			
<b>Structure of charges – Rail Regulations 2005</b>	<b>30.3</b> “HAL has not described the basis for the remainder of charges it seeks to impose – i.e. what are the “directly incurred” costs and how full recovery of operations, maintenance and renewal costs over and above the “directly incurred” costs is justified. TfL considers that it is not compliant with the Rail Regulations 2005.”	4.1 refers	No further response - CLOSED
<b>Approach taken by other infrastructure managers</b>	<b>31.1</b> “TfL describes the approach taken by Network Rail, HS1 Limited and HAL to the determination of “directly incurred” costs in 0. TfL considers that the Network Rail and HS1 Limited approaches, whilst differing, are objectively justifiable on the basis of the costs which are directly incurred as a result of a train running. HAL has made no attempt to provide the “directly incurred” charges it proposes to levy or be transparent in the way it proposes to levy its charges.”	4.1 refers	No further response - CLOSED
<b>Cost reflectivity and discrimination</b>	<b>32.2</b> “As well as not being reflective of the 32.2 characteristics of the rolling stock used to operate a service, the single unitary charge also means an operator is potentially paying for infrastructure it is not using (and is therefore	HAL has set it charges and has no plans to change, subject to any ORR determination	No further response - CLOSED

	<p>discriminatory). For example, Crossrail services will not be calling at terminal 5 but will be paying for this more recent (thus lower amortisation of Airport RAB value) and proportionately more expensive infrastructure. Indeed, in a letter from HAL dated 05 June 2006, it is expressly states that all of the costs of operating from CTA to T5 will be “entirely for HAL’s account”.<sup>5</sup> This undertaking has not been reflected in the actual charging framework proposed by HAL.</p> <p><b>32.3</b> In the case of Network Rail’s revenue requirement to be met by its fixed track access charge, this is allocated to routes on a variety of metrics included vehicle km, train km, EMGTPA, so the fixed track access charge varies by route and therefore by train operator. For use of the HS1 network, as can be seen from paragraph 3.1 of 0 costs are allocated to train operators for infrastructure that they specifically use (OMRCA2 costs – see paragraph 3 of 0) and the “directly incurred” costs vary depending upon the class of train being operated on the infrastructure.</p> <p><b>32.4</b> HAL’s proposal for a single unitary charge is not cost reflective and does not appear to comply with paragraph 1(9) of schedule 3 of the Rail Regulations 2005 which requires “<i>the relative magnitudes of the infrastructure charges must be</i></p>		
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	<p><i>related to the costs attributable to the services”</i>. The proposal also does not reflect wider ORR policy in this area (reflective costs at a route level being a thrust of Network Rail regulation in recent times).</p> <p><b>32.5</b> Overall, TfL considers there to be a material lack of clarity on the proposed arrangements, how the charges have been formulated and what charges each operator will be expected to pay. It is not clear, for example, how investment made at one station would be passed on in the charging arrangements – would an operator not calling at terminal 5 be expected to pay for upgrades to that station (noting HAL’s claim in 2006 that this would be “entirely for HAL’s account”)? There is the potential for any such operator to be unfairly treated and discriminated against in how the charges are determined.</p> <p><b>32.6</b> These are fundamental elements of the Consultation and HAL has not provided sufficient information for an informed response to be given. In this respect, as in many others, the Consultation is fundamentally flawed.”</p>	<p>HAL states again that much information was provided prior to the consultation including the approach rationale</p>	
<p><b>Calculation of fixed track access charge</b></p>	<p><i>Calculation of the current value of rail Infrastructure Manager Assets using standard UK economic regulatory practice</i></p> <p><b>33.2</b> This does not make clear: 33.2.1 the basis of the initial value of the asset (is</p>	<p>32.6 refers</p>	<p>No further response - CLOSED</p>

	<p>it cash spent, is there any adjustment for “inefficient” expenditure);</p> <p>33.2.2 the timing of investment being recognised (“logged up”) in the asset base; or</p> <p>33.2.3 how the asset values are indexed. As the charges cover the period to December 2016, forecast indices may be being used. If so, the treatment of differences from the outturn index should be clarified.</p> <p><b>33.3</b> Indeed, there also appear to be a number of inaccuracies in the data which undermine the usefulness of the data as a basis upon which charges should be set. Preliminary analysis undertaken by PricewaterhouseCoopers LLP (on behalf of TfL) suggests that a number of apparent inaccuracies in the data, suggesting it is unreliable.</p> <p><i>Indexation of current value of rail Infrastructure Manager Assets using the Cost of Capital for the Q6 period, as determined by the CAA, to achieve return on assets</i></p> <p><b>33.4</b> Whilst the CAA rate of return (5.35% real pre-tax) can be obtained via the CAA website, it would have been helpful for the rate to have been quoted in the HAL Network Statement.</p> <p><b>33.5</b> There is no discussion of why the CAA airport rate of return is appropriate for the</p>	<p>HAL is not aware of the inaccuracies to which TfL refer. The data provided has been independently reviewed and verified by external auditors and the final published figures are a product of that independent audit.</p> <p>32.2 refers</p>	
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	<p>Heathrow Rail Infrastructure. For instance, the ORR allowed rate of return for the Network Rail network is 4.93% real pre-tax, (4.31% real, vanilla), although this is not necessarily the “right” answer either).</p> <p><i>Calculation of forecast depreciation for the chargeable period</i></p> <p><b>33.6</b> The depreciation period is not specified - is it the useful economic life of the relevant asset?</p> <p><b>33.7</b> If so some statement of asset lives for key asset classes would be helpful.</p> <p><b>33.8</b> The basis of the depreciation calculation is not specified (e.g. straight line, reducing balance).</p> <p><i>The sum of the return on assets and forecast depreciation creates the lump sum of FTAC that HAL will recover through TACs</i></p> <p><b>33.9</b> This gives rise to a declining charge over time (assuming constant rate of return). There is no discussion as to why this is considered an appropriate profile. ORR allows an alternative profile such that charges are constant in real terms over time to better reflect the likely timing of benefits arising from the investment. Given the very long lives of many of the Heathrow Rail Infrastructure assets, the alternative profile should be used to ensure inter-generational fairness.</p>	<p>Heathrow has calculated overall revenue requirement following rail regulatory practise and following ORR advice.</p>	
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	<p><i>Finally the lump sum of FTAC is divided by forecast number of train movements</i></p> <p><b>33.10</b> The number of movements used is not specified. This should be supplied together with the basis of calculation (e.g. train movements per hour, number of operational hours).</p>		
<b>Use of FTAC term</b>	<p><b>34.1</b> The use of the term “Fixed Track Access Charge” is confusing as it may suggest an equivalent basis with the Network Rail charge of the same name. This is not the case:</p> <p>34.1.1 the HAL FTAC is an investment recovery charge for the purposes of the Rail Regulations 2005;</p> <p>34.1.2 the HAL FTAC recovers historic investment in full whereas the Network Rail equivalent does not; and</p> <p>34.1.3 even in the event that no element of Network Rail’s revenue requirement was met by DfT grant, the Network Rail fixed track access charge would not recover historic investment in full because the initial value of Network Rail regulatory asset base, upon privatisation in 1994, was substantially less than the value of Network Rail’s assets.”</p>	<p>Noted. HAL would be happy further explain its charges so that TfL can avoid any further confusion moving forward.</p>	<p>No further response - CLOSED</p>
<b>Treatment of Volume Benefits</b>	<p><b>35.1</b> HAL’s charging structure (whereby it always recovers costs in full irrespective of usage) means it has no incentive to actively sell spare capacity. TfL considers that ORR approval of this element</p>	<p>HAL would prefer to maximise the number of passengers coming to the airport. To do so, HAL needs to maximise its rail infrastructure capacity by creating as many</p>	<p>No further response - CLOSED</p>



	<p>of the charging framework would not be consistent with ORR’s duties under section 4 of the 1993 Act to “promote the use of the railway network in Great Britain”. Indeed, TfL considers that as part of its competition monitoring obligations in regulation 30 of the Rail Regulations 2005, ORR should ensure that HAL is incentivised to promote competition in and use of the Heathrow Rail Infrastructure.</p> <p><b>35.2</b> Even if HAL was to impose a FTAC (which, for the reasons set out in Part 4, TfL does not consider it is entitled to do), such “per movement” charge should be based on the available capacity of the Heathrow Rail Infrastructure and not the capacity which is currently used (i.e. 24 movements per hour, rather than the 16 proposed).</p>	<p>available paths as possible.</p>	
<p><b>Operation of Aviation Single Till</b></p>	<p><b>36.1</b> “...A charging regime in which train operators fund the full costs of operating, maintaining, renewing and the historic investment in the rail network but:  36.2.1 receive no offset from the commercial and other income generated at the airport; and  36.2.2 are not the beneficiaries of the construction of the Heathrow Rail Infrastructure (see paragraph 16.2), is inequitable.”</p>	<p>Heathrow notes TfL comments. It is difficult to understand why a regime in which rail passengers would pay for efficiently incurred costs would result in inequitable situation for train operating companies</p>	<p>No further response - CLOSED</p>

	<p><b>36.3</b> “HAL will derive considerable benefit from the introduction of the Crossrail services which will benefit its single till. Indeed, with the prospect of a third runway at the airport, ensuring passenger surface access to the airport will be key and the Crossrail services will enable it to achieve even more revenue to feed into the single till mechanism.</p> <p><b>36.4</b> By contrast, the Network Rail charging framework is specifically designed to recover Network Rail’s costs of operating, maintaining, renewing and enhancing its network. In the Network Rail framework, all single till revenue is set off against these costs to reduce the access charges to be levied on operators or grant to be paid by the DfT.”</p>		
<p><b>Periodic review</b></p>	<p><b>37.3</b> “There is no clear mechanism for the review of the charges and it is not clear how “common costs” can also “vary with traffic”. Indeed, the proposed arrangements afford no certainty of what the charges will be (or the process for determining them) when the Crossrail services are scheduled to commence in 2018. This means that neither TfL nor MTR Crossrail will be able to plan their respective businesses with a reasonable degree of assurance.</p> <p><b>37.4</b> It is not clear whether HAL intends to</p>	<p>Investment on renewals over the consulted period has been incorporated.</p> <p>Heathrow is minded to engage with TOC to ensure visibility of the prospective investment in rail asset renewals and to learn from best industry practise. HAL will consult on any further review of charges in order to ensure transparency.</p>	<p>No further response - CLOSED</p>

	<p>unilaterally impose revised charges on train operators (which TfL would be firmly in opposition of), for there to be some form of consultation process or whether (as TfL would prefer) there to be scrutiny and oversight from ORR. Indeed, it is not clear how often and the basis upon which future charges would be set, reviewed and amended. TfL considers that HAL should (as a very minimum) set out an outline of the process for reviewing charges in future and the basis upon which charges could be amended. TfL would expect this to be contractually binding on HAL and subject to regulatory scrutiny from ORR.</p> <p><b>37.5</b> HAL’s proposal means there would be a considerable degree of uncertainty in the access charges which would be payable – not enabling MTR Crossrail or TfL to plan their respective businesses with a reasonable degree of assurance (to which reference is made to ORR’s duties under the 1993 Act). This is particularly the case because there is no certainty beyond December 2016 of what the charges will be or how they will be calculated.</p>		
<p><b>Transparency: Separation</b></p>	<p><b>38.2.1</b> “There is no description in the HAL Network Statement of how the Heathrow Railway Infrastructure and operations have been separated, nor the interaction with the CAA aviation charge setting process. In particular,</p>	<p>Demonstrated to the satisfaction of the ORR</p>	<p>No further response - CLOSED</p>

	<p>HEOC is a wholly-owned subsidiary of HAL and TfL would have expected HAL to clearly demonstrate what steps have been taken to ensure separation (including that capacity allocation and charging will be undertaken in compliance with the Rail Regulations 2005).</p> <p><b>38.2.2</b> It is also not clear what charges HEOC will actually pay to HAL for its use of the Heathrow Rail Infrastructure. Given the lack of transparency in relation to separation and discrimination highlighted elsewhere in this response, TfL would expect to have seen an explicit statement on separation between HAL and HEOC and how the charging arrangements will apply to HEOC.”</p>	<p>HEOC will pay the same rate as all other train operators – open to ORR audit as when required</p>	
<p><b>Transparency: Interaction with CAA aeronautical charge setting</b></p>	<p><b>38.3.1</b> “Although it is not specified in any of the Documents, from discussions with HAL as part of the pre-consultation engagement, TfL has inferred that the track access charges paid by train operators will be treated as single till income in the aviation charge setting process. HAL has not made clear – nor is TfL reasonably able to infer – how this works in relation to the HEOC operations:</p> <p>(a) Do the revenue and train operating costs associated with the HEOC service currently included in the aviation single till, now fall outside as an unregulated net revenue stream, to be replaced by a track access charge?</p> <p>(b) Is there a charge to HEOC, the receipt of</p>	<p>38.2.2 refers</p> <p>During the process of separation HAL engaged external auditors to review its proposed charges. These charges are based on commercial rates and have been set accordingly. There are no additional receipts.</p>	<p>No further response - CLOSED</p>

	<p>which is treated as additional aviation single till income, for the HEOC train / depot / station assets in the Airport RAB? There is the potential for a sizeable additional unregulated income stream gain for HAL at the expense of train operators. This is particularly so if there is no charge for the HEOC assets and following the introduction (and payment for) Crossrail services. There is no visibility of any of this vital information which should, in addition, be of interest to the CAA and airport users.</p> <p><b>38.3.2</b> In any event, once MTR Crossrail starts paying access charges for the remainder of Heathrow airport’s current control period (to 31 December 2018) HAL will be recovering costs it has already been remunerated for through airport charges. As noted in paragraph 17, TfL is concerned that the rate of return on an Airport RAB could quickly become misaligned with ORR’s regulatory policies. TfL remains strongly of the view that ORR, as the expert on the rail industry, is much better placed to determine public expenditure on rail (rather than the CAA determining how much private airlines will pay).”</p>	<p>All information is subject to regulatory scrutiny and will continue to be available as required to approval bodies</p> <p>Double recovery is not permitted by regulatory bodies</p>	
<p><b>Transparency: Determination of the Rail RAB</b></p>	<p><b>38.4.1</b> “The asset base for the calculation of the FTAC is based, TfL considers (from a review of limited information supplied by HAL) on an extract of asset register data to determine the amount and timing of investment to which</p>	<p>19.2.1 refers to this section</p>	<p>No further response - CLOSED</p>

	<p>indexation and amortisation have been applied to determine the Rail RAB value at a point in time.</p> <p><b>38.4.2</b> It is not an extraction of the relevant rail assets from the CAA asset base at the “commencement date” for separate form of rail regulation. This cannot be done because of the “top down” nature of the determination of the CAA asset base (i.e. there is no definitive list of assets comprising the CAA asset base).</p> <p><b>38.4.3</b> This means there is no certainty that HAL is proposing to set an investment recovery charge which is based on appropriately defined and appropriately valued assets. This introduces the very substantial risk of HAL recovering of an amount already recovered (or being recovered) under the existing CAA regime.</p> <p><b>38.4.4</b> The nature of the asset register from which the cost information has been taken is not known. If it was a fixed asset register to support accounting information then these values may differ from those that would be determined by economic regulation as they would not necessarily exclude inefficient expenditure. For example, additional costs arising from the 1994 tunnel collapse may be included.”</p>		
<p><b>Transparency: Supporting detail</b></p>	<p><b>38.5.1</b> “TfL was disappointed to see that HAL has provided no supporting detail in the</p>	<p>19.2.1 refers</p>	<p>No further response - CLOSED</p>

<p><b>for charges</b></p>	<p>Documentation for the level of charges which it proposes to levy, including:  (a) for the FTAC, insufficient detail has been provided on the nature, values and lives of the relevant assets; or  (b) for the Common Cost Charges, there is not even the most rudimentary split between operations and maintenance costs, let alone any further breakdown of each of these between track and stations; or  (c) there is no distinction between track and station access costs; or  (d) the assumed number of movements used to derive the proposed “per movement” charges.”</p>		
<p><b>Renewals funding</b></p>	<p><b>39.1</b> “As noted in paragraph 37 above, the HAL Network Statement states that the FTAC review will incorporate investment in the network over the period from September 2015 to December 2016, suggesting to TfL that no renewal expenditure in this period has been included in the calculation of the charges.</p> <p><b>39.2</b> TfL would query this statement, as information supplied to TfL by HAL as part of pre-Consultation engagement would suggest that £1.1m of additional investment will be added to the asset base in the year ending 31st December 2016. As far as TfL can determine, this amount would feed into the FTAC calculation.</p>	<p>Investment on renewals over the consulted period has been incorporated.</p>	<p>No further response - CLOSED</p>

	<p><b>39.3</b> If renewals expenditure is indeed dealt with on a prospective basis, then the treatment of underspends against forecast should be clarified. There is a risk that the underspends will, by virtue of the way they flow through the aviation regulation mechanism, accrue to airport users and HAL as the infrastructure manager. This would be an unacceptable position for TfL, whereby it has made the relevant payments but other (non-rail) third parties would receive the benefit of any underspend.”</p>		
<p><b>Stations Long Term Charge</b></p>	<p><b>40.1</b> “HAL intends to incorporate the charges for station access into the track access contract (which TfL is strongly against) but for access to stations to be granted by a separate station access contract, in consideration of a £1 payment. This means that:</p> <p>40.1.1 it is impossible for users of a station to examine and test the make-up of the costs being charged or relate outputs to what is being paid;</p> <p>40.1.2 there is no easy way to properly adjust the charges in the event that there are changes to the station access regime or indeed if the stations are divested by HAL; and</p> <p>40.1.3 HAL’s failure to perform under the station access agreement does not afford sufficient remedy (e.g. access charges cannot be withheld and there is nothing to abate).</p>	<p>HAL has no plans to change its’ approach</p>	<p>The position on Station contractual arrangements are currently subject to a workshop with interested parties</p>



	<p><b>40.2</b> TfL therefore disagrees with the proposed structure and notes it does not follow the “pro forma” industry approach as suggested by HAL in the Extension Response.”</p>		
<p><b>Station Qualifying Expenditure</b></p>	<p><b>41.1</b> “HAL has provided little relevant information (including in the HAL Network Statement) on the stations or how its infrastructure management activities will be structured. For example, it is not clear how costs will be established and the consequent charges will be calculated. Instead, HAL proposes to lump all costs into the track access charge.</p> <p><b>41.2</b> TfL has inferred that station platform staff, station dispatch arrangements, equipment and related services are to be provided by HEOC (as this is currently the position) and figure 2 in the HAL Network Statement suggests this will continue to be the case.</p> <p><b>41.3</b> The arrangements by which operators would procure and pay (via a QX charge or otherwise) for these services is not made clear in the HAL Network Statement, the HAL Station Access Agreement, the HAL SACs or the HAL Annexes.”</p>	<p>HAL will consider for inclusion in the Network Code</p>	<p>40.1 refers</p>
<p><b>EC4T</b></p>	<p><b>42.2</b> “The following issues are not addressed in the HAL Network Statement: 42.2.1 How the contractual relationship between: (a) HAL (as infrastructure manager of the</p>	<p>HAL welcomes specific enquiries here – HAL &amp; NR are in discussions relating to</p>	<p>Further discussion has been held with Sponsors and agreed with Network Rail as part of a workshop. The Network</p>

	<p>Heathrow Rail Infrastructure) and a user of the Heathrow Rail Infrastructure; and  (b) a user of the Heathrow Rail Infrastructure and Network Rail, will work in practice;</p> <p>42.2.2 How meter readings from metered train consumption will be used to derive charges – the HAL Track Access Contract makes reference to the Network Rail Traction Electricity Rules (which are a Network Rail document and so do not apply to the Heathrow Rail Infrastructure, where the contract will be between HAL and the user of the track (and not Network Rail));</p> <p>42.2.3 How volume wash up differences will be dealt with between metered and non-metered operators (as Crossrail class 345 trains will be metered);</p> <p>42.2.4 How electrical losses in the supply to trains on the Heathrow Rail Infrastructure are dealt with; and</p> <p>42.2.5 How boundary issues are dealt with if a different Network Rail tariff applies to the Heathrow Rail Infrastructure (which is off the Network Rail network) and the Network Rail network.”</p>	<p>inter relationships – we will update the Network Code as this matures</p> <p>TAC has been updated</p> <p>This is an on-going position and is likely to change before Crossrail comes into service. We will update the Network Code as it matures.</p> <p>42.2.4 refers</p>	<p>Statement is being updated to provide clarity on this issue.</p>
<b>Performance regime</b>	<b>[44]</b>		
<b>Abuse of Dominant</b>	<b>45.2</b> “Such an abuse would also have significant adverse effects on customers (i.e. there would be	The fares are already proven in the market for HEOC. HAL has no sight of the proposed	No further response - CLOSED

<b>Position</b>	<p>a very real customer detriment).  PricewaterhouseCoopers LLP has carried out some preliminary analysis on behalf of TfL which shows that if HAL's proposed charges were actually implemented and these charges had to be recovered from increased rail farebox revenues, TfL would need to consider the impact on fare levels to/from Heathrow airport (and within London more widely) and service levels to/from Heathrow airport. This would be inconsistent with the duties of various parties (e.g. TfL and the ORR) to facilitate use of the Crossrail service, to say nothing of the potentially adverse impact on HAL itself of passengers being made to choose inferior ways of travelling to and from the airport."</p>	fare for Crossrail so unable to comment.	
<b>Directly Incurred Costs</b>	<p><b>46.1</b> "TfL considers HAL's arrangements are unworkable in practice and instead considers the cost of access to the Heathrow Rail Infrastructure should be:  46.1.1 the cost that is directly incurred as a result of operating the train service;  46.1.2 such directly incurred costs reflect the impact the trains have on the infrastructure and the parts of the infrastructure used by the service; and  46.1.3 substantially less than the CCC suggested by HAL.  PricewaterhouseCoopers LLP has carried out some preliminary analysis on behalf of TfL which</p>	19.2.1 refers	No further response - CLOSED

	suggests that HAL’s proposed CCC is an order of magnitude higher than an equivalent charge for a minimum access package on the Network Rail infrastructure and on comparable networks in Europe.”		
<b>HAL NETWORK STATEMENT</b>			
<b>Failure to meet the requirements of the Rail Regulation 2005</b>	<p><b>49.1</b> “The HAL Network Statement does not satisfy the requirements of the Rail Regulations 2005 for the following reasons:</p> <p>49.1.1 there is no information about access to or the supply of services at any of the stations forming part of the Heathrow Rail Infrastructure (or from where further information can be obtained) (i.e. not meeting the requirements of regulation 11(4)(b));</p> <p>49.1.2 there is no information available relating to the charging methodology and how this has been determined. Although TfL acknowledges that certain principles have been set out in Part 6 of the HAL Network Statement, it is not clear how these charges have been devised, where there are exceptions and whether any discounts are available (i.e. not meeting the requirements of regulation 11(4)(c)). Please also see TfL’s comments in Part 5 on charging more generally;</p> <p>49.1.3 no information has been provided on charges for accessing the services listed in schedule 2 of the Rail Regulations 2005 (which</p>	RfL have consistently advised it has no requirement for services at HAL stations  19.2.1 refers	Further advice has been sought through HAL independent experts as well as further engagement with rail industry through workshops. The regulation documents will be updated, where appropriate, as soon as HAL completes the current review - CLOSED

	<p>include stations) as HAL appears to want to hide these within the track access charge (i.e. not meeting the requirements of regulation 11(4)(d)). Please also see TfL's comments in paragraph 38 in relation to the lack of transparency in charging for track and station access;</p> <p>49.1.4 whilst HAL has set out its capacity allocation principles in Part 4 of the HAL Network Statement, as noted in paragraph 49.1.5 below, TfL is of the view that these are discriminatory as they favour incumbent operators and therefore HAL has not complied with its obligations to fair and non-discriminatory grant of access. There are also no indications in the HAL Network Statement on the likely capacity requirements for maintenance or details of the process by which these are agreed between operators (i.e. the engineering access statement process). Instead, paragraph 4.5 of the HAL Network Statement has a very high level statement that "route maintenance is restricted to periods when there are no timetabled services running or as agreed by all parties". This affords little certainty to prospective users of when maintenance works may take place – for example, if a prospective user proposed a 24-hour service using the Heathrow Rail Infrastructure, the position is not clear. TfL would draw attention to the equivalent paragraphs in the Network Rail and HS1 Limited network statements which are more detailed and</p>	<p>Previously discussed with ORR</p>	
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	<p>offer more certainty to prospective users. As a result, TfL considers that HAL has not satisfied the requirements of regulation 11(4)(e); and 49.1.5 paragraph 4.3 of the HAL Network Statement gives a very high level overview of the timetabling process – essentially saying that it is the same as the process which applies on the Network Rail network. Indeed, this is reflected in Annex A which sets out the timetabling process for access to the Network Rail network rather than the Heathrow Rail Infrastructure and seems to be inconsistent with statements made elsewhere in the HAL Network Statement as to the processes which HAL will take in relation to establishing the timetable planning rules and engineering access statement (please see TfL’s comments in paragraph 50.8). This does not meet the requirements of regulation 11(4)(f). The Heathrow Rail Infrastructure is a separate piece of infrastructure for which users will have a separate access agreement with HAL and there will be a distinct process by which HAL allocates capacity in its role as infrastructure manager (even if such process is designed to align with the Network Rail processes). It is therefore essential that HAL provides details of the procedures, deadlines and criteria which it will use to allocate capacity for its network. It is not sufficient to say that the Network Rail processes</p>	<p>HAL timetable and utilisation needs to dovetail into NR routes and availability. HAL therefore need to engage in the same process and timescales. All paths are dependant on NR access. NR and HAL are still in discussion on the practical join-up processes. We will update the Network Code as this matures</p>	
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	<p>will apply.</p> <p><b>49.2</b> The HAL Network Statement does not fulfil 49.2 the requirements of the Rail Regulations 2005. TfL disagrees with the statement made by HAL in paragraph 1.5.1 of the HAL Network Statement that “This Network Statement is provided in compliance with HAL’s obligations under the Regulations.”</p>		
<b>Who is the infrastructure manager?</b>	<p><b>50.2</b> “The HAL Network Statement does not make clear which company is the infrastructure manager of the Heathrow Rail Infrastructure. Paragraph 1.2 states that “HAL is the owner of the Heathrow Spur and NR is the asset manager under the Regulations”. “Asset manager” is not defined in the Rail Regulations 2005 and, despite the table on page 8 of the HAL Network Statement, it is not clear to TfL whether HAL and/or Network Rail is the infrastructure manager under the Rail Regulations 2005 or for the purposes of the ROGS. It is also not clear which party will be the infrastructure manager or station operator of each of the stations forming part of the Heathrow Rail Infrastructure (and which party will be granting the relevant access), which could be HAL or HEOC (please also see TfL’s comments in paragraph 50.4 below in relation to stations).”</p>	<p>HAL has applied descriptive titles as guided by ORR. HAL are responsible for the HAL network and all correspondence should be directed accordingly.</p> <p>HAL contact is clearly stated in the Network Statement</p>	No further response - CLOSED
<b>Regulation</b>	<p><b>50.3</b> “HAL appears to have misunderstood how the railway in Great Britain is regulated. For</p>	<p>The quoted HAL statement is accurate in that “access” is governed by the 2005</p>	No further response - CLOSED

	<p>example, HAL claims that “access to the main UK rail network is principally governed by the Regulations” (with no mention being made of the 1993 Act). TfL is concerned that HAL does not fully understand how the railway is regulated within Great Britain – or how it will itself be regulated: the Documents generally frequently confuse the regulatory issue in terms of whether the 1993 Act and/or the Rail Regulations 2005 apply. The position should be made clear in the HAL Network Statement to assist prospective users of the Heathrow Rail Infrastructure.”</p>	<p>Regulations.</p>	
<p><b>Stations</b></p>	<p><b>50.4</b> “There is very little information in the HAL Network Statement in relation to the stations forming part of the Heathrow Rail Infrastructure (save for the technical aspects set out in paragraph 3.3.2 of the HAL Network Statement). It is not clear who grants access to those stations, who is responsible for their maintenance and the charging arrangements for the stations (which appear to be hidden in the track access costs). This is crucial, since gaining access to the stations is equally as important as gaining access to the track infrastructure. For example, in the “contact” section in paragraph 1.8 of the HAL Network Statement, reference is only made to</p>	<p>HAL will review contact information in Network Statement and Network Code and update accordingly</p>	<p>The position on Station contractual arrangements are currently subject to a workshop with interested parties</p>



	<p>“TACs” and there is no mention of station access. TfL considers the lack of stations information to be a serious and significant omission from the HAL Network Statement.”</p>		
<p><b>Absence of relevant documentation</b></p>	<p><b>50.5</b> “There are a number of documents referred to in the HAL Network Statement which have not been provided and no indication of their relative stage of development has been given (for example, the Engineering Access Statement, Timetable Planning Rules, Emergency Access Code, Performance Data Accuracy Code, Operational Resilience Plan and Railway Systems Code). These are key documents and must be provided if TfL is to be able to comment on HAL’s proposals. Please see TfL’s comments in paragraph 8.1.1 and Schedule 2 of this response for further comments on the absence of relevant documentation.”</p>	<p>Operational Resilience Plan is available Engineering Access Statement will be issued annually and available in advance of Crossrail services To be made available: Timetable Planning Rules Performance Data Accuracy Code Railway Systems Code</p>	<p>Copy of the Operational Resilience Plan has been provided. EAS is issued annually which will include the TTPRs. Details of how this will be done will be covered in the Part D workshop and reflected in Part D if not already covered. Current PDAC has been issued.</p>
<p><b>Discriminatory capacity allocation criteria</b></p>	<p><b>50.6</b> “HAL’s proposed prioritisation when allocating capacity as described in the “description of timetabling process” section (paragraph 4.2) is, on its face, discriminatory and unlawful. HAL proposes to give priority to existing track access capacity allocation, followed by future track access capacity commitments and then other passenger services. Plainly this approach favours the incumbent operator since its access rights get higher priority than new requests for access when the timetable is prepared. Once HAL has sold capacity, all</p>	<p>Set out as previously discussed with ORR</p>	<p>The process HAL describes is exactly as set out in NR’s Network Code (except for where NR deals with issues irrelevant to HAL network).</p> <p>The presence of the Exemption Order changes the context slightly, in that for non-exempt facilities, the ORR ensures that access rights are granted in a fair and equitable manner.</p>

	<p>requests to exercise rights to place capacity into a timetable should be treated on a fair and non-discriminatory basis provided they are exercised by the relevant timetable priority date. It is not acceptable – and indeed is discriminatory and unlawful - that incumbent operators (which, in the case of HEOC is within the same group of companies as HAL) have their current access protected and preferred.”</p>		<p>The text as drafted remains the same with the exception of a typo tidy up of the numbering.</p>
<p><b>Traction electricity and other services</b></p>	<p><b>50.7</b> “Paragraph 5.3.1 of the HAL Network Statement states “HAL provides the infrastructure to distribute the traction power and the TOC procures that traction power from Network Rail.” There is no information within the HAL Network Statement as to how this is done or the relevant contact at Network Rail, making it very difficult for a prospective user seeking to use the Heathrow Rail Infrastructure. The correct position is that:</p>	<p>The current situation is reflected in the Network Statement 50.4 refers</p>	<p>Further discussion has been held with Sponsors and agreed with Network Rail as part of a workshop. The Network Statement is being updated to provide clarity on this issue</p>

	<p>50.7.1 it is HAL’s responsibility as infrastructure manager to provide electricity if it runs an electrified network;</p> <p>50.7.2 more information is needed about the process for obtaining that traction electricity (whether from HAL or Network Rail);</p> <p>50.7.3 information is also required on “off network” facilities which may be needed to operate a service on the Heathrow Rail Infrastructure, even if it is simply contact details for the relevant facility owners.”</p>		
<b>Performance regime</b>	<p><b>50.8</b> “HAL has set out the performance regime principles in paragraph 6.2.2 of the HAL Network Statement. However, these principles are not reflected in the wording of schedule 8 of the HAL Track Access Agreement. TfL requests that HAL articulates its performance regime principles consistently and transparently so that consultees can consider and respond appropriately.”</p>	<p>Schedule 8 of the Track Access Agreement clearly sets out the details of HAL performance regime. If there is some confusion on its operation then HAL would be happy to meet with any TOC proposing to operate on the Heathrow Spur and explain further.</p>	<p>Schedule 8 is under review – to be advised</p>
<b>Engineering Access Statement and Timetable Planning Rules</b>	<p><b>50.9</b> “the HAL Network Statement does not set out the process for establishing (including consultation) these key documents. In relation to: 50.9.1 the engineering access statement, the HAL Network Statement states that it “is set by NR as HAL’s appointed asset manager”. Users will have their access contracts with HAL and TfL would expect HAL to have responsibilities to consult with its users in relation to engineering access (even if it subcontracts such responsibilities to Network Rail). TfL would not expect such</p>	<p>HAL will review the points and update the Network Statement accordingly</p>	<p>The timetabling process will be operated by Network Rail who will undertake the co-ordination on HAL’s behalf(which is dealt with in the response to 52.17).</p> <p>On the specific point here, consultation of Engineering Access Statement and the Timetable Planning Rules; collectively “the Rules” is covered</p>

	<p>statement to be unilaterally set by a third party with which a user of the Heathrow Rail Infrastructure has no contractual relationship; 50.9.2 the timetable planning rules, there is reference to consultation. However, the process for consultation is not set out in the HAL Network Statement and TfL would prefer it made clear that once established by HAL, the timetable planning rules will be consulted upon in their entirety with interested parties.</p> <p>TfL would expect HAL to undertake a consultation with interested parties on each occasion either of these documents are prepared as they fundamentally impact on a user's access to the Heathrow Rail Infrastructure. The HAL Network Statement also suggests there may not be a formal consultation process for the subsidiary timetable and TfL objects to this proposal."</p>		<p>within the HAL Network Code.</p> <p>HAL does not see the point in repeating this information in the Network Statement but recognises TfL's concerns and will include an additional sentence in the Network Statement stating: "Full consultation of changes will be undertaken." CLOSED</p>
<b>Maintenance plan</b>	<b>50.11</b> "Connected with TfL's comments on the Engineering Access Statement and Timetable	Noted	No further response - CLOSED

	<p>Planning Rules in paragraph 50.9, there is reference in paragraph 4.5 of the HAL Network Statement to “HAL’s maintenance and renewals plan”. TfL has had no sight of this plan and is therefore unable to consider its adequacy and the impact which it may have on the operation of rail services. TfL therefore reserves its right to make further comments in relation to such plan once TfL has seen it. Paragraph 4.5 of the HAL Network Statement states that “The capacity for such work is published within the Engineering Access Statement and managed as part of the train planning process.” TfL queries whether management as part of the train planning process is consistent with maintenance being restricted to periods where there are no timetabled services running, as specified later on in the paragraph. As noted above, TfL would also expect HAL to undertake consultation in relation to the planning of engineering works and what forms part of those plans.”</p>	Noted	
<p><b>Heathrow rail infrastructure standards and rules and rolling stock compatibility</b></p>	<p><b>50.12</b> “TfL requires clarity over which NR standards must be complied with to access the Heathrow Rail Infrastructure. This is currently drafted as “all applicable NR standards” and it is not clear which Network Rail standards are applicable. Paragraph 2.5 of the HAL Network Statement also suggests that HAL has not yet developed an objective process for assessing rolling stock compatibility as it relies upon</p>	<p>Rolling Stock that complies with Network Rail infrastructure is more than likely to comply with HAL tunnel/track compatibility. Under specific obligations (e.g. ROGS) HAL will need such evidence. Any additional technical information required by the applicant is available on request</p>	<p><i>On Standards:</i> HAL’s approach is reasonable. Requiring compliance with all applicable NR Standards is a sensible approach to take. To try to insert an exhaustive list is difficult and runs the real risk of omission. Standards change on an on-going basis so any list would</p>

	<p>Network Rail processes and then suggests there may be additional requirements which it then seeks to impose (which are not made clear). This does not afford any certainty to a prospective user of the Heathrow Rail Infrastructure as to what rolling stock needs to satisfy and TfL therefore is concerned at the absence of an objective process. TfL would have thought that this should include references to the specifics of the tunnel and compliance with relevant technical standards.”</p>		<p>risk becoming out of date at issue.</p> <p>HAL believes It is reasonable for an operator to read the Standards and determine which are applicable to the specific characteristics of the part of the network over which they operate.</p> <p><i>On rolling stock compatibility:</i> For Rolling Stock compliance for acceptance of Rolling stock to the Heathrow Infrastructure, providers will need to satisfy all NR applicable standards and provide assurance to HAL that the Rolling Stock will not have an adverse effect on HAL’s infrastructure. This process is objectively managed by the independently chaired HAL-ARP panel. TORs are available and the process is currently being applied.</p> <p>Amended wording will be included within the Network - Statement to reflect these requirements - CLOSED</p>
<b>HAL Network</b>	<b>50.13</b> “TfL notes the HAL Network Statement is	Noted for review	Review

<b>Code</b>	not factually correct when it describes the Network Code in paragraph 2.3.2. This indicates that the HAL Network Code provides: (1) scope to amend the HAL Network Code itself; (2) mechanisms to establish performance monitoring systems to be applied in the event of an operational disruption. As discussed in paragraphs 52.2 and 52.3, neither of these provisions are actually contained in the HAL Network Code”.		
<b>Access Options</b>	<b>50.15</b> “TfL disagrees with the suggestion in paragraph 4.4.3 of the HAL Network Statement that an access option will only be granted where an applicant wishes to operate trains for which specific infrastructure enhancement is required. TfL recognises that the Rail Regulations 2005 place certain restrictions on the length of a framework agreement which is tied in with investment (and an access option for equivalent lengths of time would be considered in the same light). However, there may be other circumstances which would justify the grant of an access option – such as investment in non-train assets. This paragraph should be broader in scope than currently drafted.”	Noted for review	Review
<b>Compliance with law</b>	<b>50.16</b> “The validity period of the HAL Network Statement is September 2015 – December 2016. The DfT has	The validity is relevant to the current situation. As new requirements emerge HAL will make proper consideration	No further response - CLOSED

	<p>recently undertaken a consultation in relation to the replacement of the Rail Regulations 2005 with the Rail Regulations 2015. The Rail Regulations 2015 are expected to come into effect before the end of 2015. No reference has been made to the Rail Regulations 2015 in the HAL Network Statement, which is a surprising oversight given the validity period of the document. TfL notes that there are a number of requirements set out in the Rail Regulations 2015, including in relation to business plans. TfL is concerned that the HAL Network Statement may not comply with the Rail Regulations 2015. In addition TfL has not been provided with HAL's business plan as required by the Rail Regulations 2015."</p>		
<b>Process for gaining access</b>	<p><b>50.17</b> "It is not clear from the HAL Network Statement how a prospective user of the Heathrow Rail Infrastructure should seek access and the matters which HAL will take into account in assessing whether to grant such access."</p>	Contact details are shown in the Network Statement – 50.4 refers	No further response - CLOSED
<b>Absence of relevant information</b>	<p><b>50.18</b> "There are a number of elements which can be found in Network Rail's network statement which are not present in the HAL Network Statement, which is, on its face, surprising. For example, line gradient, maximum train length, tunnel restrictions, train regulation and environmental restrictions are not specified in 0 of the HAL Network Statement. TfL is of the view that, wherever practicable, HAL should</p>	Any additional technical information required by the applicant is available on request	Additional reference will be included in the Network Statement to the NR Western Sectional appendix which contains much technical information about the HAL infrastructure (route section reference GW180) CLOSED



	consider aligning the HAL Network Statement with the Network Rail equivalent.”		
<b>Issuer</b>	<b>50.19</b> “In paragraph 1.1 of the HAL Network Statement, it is not clear what the “issuer” refers to – is it the issuer of the Network Statement, a company which offers bonds/financing or some other company?”	HAL is the issuer.	No further response - CLOSED
<b>Heathrow Connect</b>	<b>50.20</b> “Paragraph 1.2.2 of the HAL Network Statement refers to the current services. The Heathrow Connect service calls at intermediate stations between the airport and London Paddington (and not central London). In addition, the HAL Network Statement refers to a “change to this service” but does not make it clear what that change may be, which could have an important impact on prospective users planning with reasonable certainty the future of their businesses”	There are no changes planned for the current HEOC services prior to Crossrail coming into service. The current Connect service will be consumed by Crossrail in 2018 as HAL understands and therefore will be a change driven by TfL.	No further response - CLOSED
<b>HEOC</b>	<b>50.21</b> “TfL queries the relevance of HEOC being exempted from designation under section 23(1) of the 1993 Act in the context of HAL granting access to the Heathrow Rail Infrastructure (paragraph 1.4 of the HAL Network Statement).”	This is for information only as the exemption status might not be known to all readers.	No further response - CLOSED
<b>Heathrow Group</b>	<b>50.22</b> “It is not clear which companies form part of the Heathrow group (the definition of “Group” is inconsistent with the information set out in paragraph 1.1).”	The term Heathrow Group is clearly defined as “subsidiaries of Heathrow (SP) Limited”. All such group companies are list on the public register.	Further details have been provided to Sponsors - CLOSED
<b>Updates to HAL Network Statement</b>	<b>50.23</b> “TfL notes that Network Rail consults on updates to its network statement once a year, following which an update is published. This is	The validity period for the HAL Network Code & Statement is until Dec 2016. HAL expects to consult on a relevant basis to	No further response - CLOSED

	expressly stated in the Network Rail network statement. TfL expects HAL to follow a similar consultation process prior to publication of an updated HAL Network Statement and expects to be consulted as part of that process. This should be made clear in paragraph 1.7.2 of the HAL Network Statement.”	the rail industry	
<b>Contacts</b>	<b>50.24</b> “It would be helpful for the “contacts” section of the HAL Network Statement to be updated to reflect relevant contacts at Network Rail/HEOC (and TfL/MTR Crossrail in due course). This will ensure a prospective user can find out all necessary information to be able to access the Heathrow Rail Infrastructure and other services operating on that infrastructure.”	50.4 refers	To be discussed
<b>One stop shop</b>	<b>50.25</b> “Both the Network Rail and HS1 Limited network statements refer to the “One Stop Shop” service. There is a noticeable absence of references to this or to RailNetEurope (and associated tools produced by RNE) in the HAL Network Statement. TfL wishes to seek clarification from HAL as to the reason for this and would draw HAL’s attention to the requirements of regulation 19(3) of the Rail Regulations 2005 in this respect.”	HAL has no plans to change its current offering	There is no requirement in the Regulations for an Infrastructure Manager to operate a ‘one stop shop’. Indeed the regulations state that the “...infrastructure manager is permitted [ <i>rather than required (para 23(4))</i> ] to act on behalf of that applicant...”  The ‘One Stop Shop’ principle is primarily for operators who traverse international borders. Technically such an arrangement could also be applied to Heathrow services as the trains

			<p>will traverse two infrastructure administrations (NR and HAL).</p> <p>However, given NR is acting as an agent for HAL for timetabling it would be slightly odd for HAL to offer the one stop shop service. And, given its relative small size it is hardly reasonable that HAL are required to shoulder the burden of co-ordinating access across other administrations - CLOSED</p>
<b>Safety certificate</b>	<b>50.26</b> "TfL questions why HAL does not want sight of an application for a safety certificate in the context of ROGS when a party may be interested in accessing the Heathrow Rail Infrastructure (paragraph 2.2.4)."	HAL would require all relevant evidence to be produced	HAL will amend the Network Statement to state explicitly that HAL also want sight of safety certification under ROGs - CLOSED
<b>Insurance requirements</b>	<b>50.27</b> "TfL considers it would be helpful for HAL to state in paragraph 2.2.5 of the HAL Network Statement that the £155 million should be stated as being on a "per incident" basis. This is more accurate and more closely aligned with ORR's current requirements on insurance."	As pointed out this is an industry standard and is already widely understood and as such there are no plans to make changes at the present time.	No further response - CLOSED
<b>Station works</b>	<b>50.28</b> "HAL mentions in paragraph 3.3.2 of the HAL Network Statement that a programme of works is taking place during 2015 to reduce the risk of passenger accidents which "will impact the platform train interface when introducing other	There is no access issue – and HAL has already discussed in detail with RfL & Bombardier in the monthly Ops & Technical meeting	Hal can provide further information to TFL if they wish - CLOSED

	services”. The impact of this on vehicles which can use the stations is not specified and so prospective users will have no certainty over whether their rolling stock will be able to access the Heathrow Rail Infrastructure. TfL therefore requests that additional certainty is provided by HAL in this area. “		
<b>Capacity allocation</b>	<b>50.29</b> “The one sentence introduction in paragraph 4.1 of the HAL Network Statement does not offer sufficient context to prospective users. TfL considers HAL should have greater regard to the Network Rail equivalent in this area. TfL considers that greater prominence should be given in paragraphs 4.3 and 4.4.1 of the HAL Network Statement to coordination with Network Rail. In this respect, TfL’s comments on the “one stop shop” in paragraph 50.25 above apply.”	HAL has no plans to change at the present time	No further response - CLOSED
<b>Operational Regulation</b>	<b>50.30</b> “TfL requests clarity from HAL in relation to the train regulation policies as described in paragraph 4.7.2 of the HAL Network Statement. In the first paragraph, it states that Network Rail (acting on behalf of HAL) develops and maintains those policies, whereas the final sentence indicates that it is HAL that does this. TfL agrees that a consultation is appropriate in relation to such policies but seeks clarity as to who will be responsible for that consultation and the development of the policies. TfL also wishes to consider the current train regulation policies for	Policies and procedures are developed by HAL and may also incorporate some Network Rail policies where it is appropriate. Train operators should contact HAL in the first instance	No further response - CLOSED

	the Heathrow Rail Infrastructure and may have further comments on this aspect of the proposal.”		
<b>Missing information</b>	<p><b>50.31</b> “There are a number of areas where HAL does not include information which may be relevant to prospective users (in addition to those set out in paragraph 50.18) and will also be required for ORR to reach a rational and reasonable view on the proposed charging, regulatory and contractual framework (see also Schedule 2). For example, no statement is made as to whether dangerous goods are permitted on the Heathrow Rail Infrastructure. Similarly, there is no information on gauging and axle weight restrictions or whether self-powered trains (such as diesel multiple units) can be used on the Heathrow Rail Infrastructure. Although TfL does not intend to transport any such goods/operate such trains, this point is reflective of the general lack of information within the HAL Network Statement. Although TfL does not consider that a network statement with an equivalent level of detail to the Network Rail or HS1 Limited network statements would be proportionate for a network the size of the Heathrow Rail Infrastructure, TfL recommends that HAL more closely and carefully considers the Network Rail and HS1 Limited equivalents. There is information contained within those documents</p>	HAL has no plans to change at the present time	No further response - CLOSED

	which it would be useful to see in the HAL Network Statement (tailored as appropriate to reflect the nature of the Heathrow Rail Infrastructure).”		
<b>Train regulation policies</b>	<b>50.32</b> “There is no provision for resolution of disputes regarding the train regulation policies established by HAL. TfL considers that an equivalent provision to the Network Rail network statement provision <i>should</i> be included in the HAL Network Statement.”	Noted for review	TBD
<b>Typographical errors and definitions</b>	<b>50.33</b> “there are a significant number of typographical errors, unused and incomplete definitions and uses of capitalised terms which have then not been defined <i>throughout</i> the HAL Network Statement which HAL will no doubt address as part of its development of the HAL Network Statement following the conclusion of the Consultation.”	Noted for review	HAL will review all documentation before final issue - CLOSED
<b>HAL NETWORK CODE</b>			
<b>Part B</b>	<b>52.2</b> “...It is not acceptable for HAL to claim that “Part B of the NR Network Code applies” to the use of the Heathrow Rail Infrastructure for the following reasons: 52.2.1 regulation 14(1) of the Rail Regulations 2005 requires an infrastructure manager to “establish a performance scheme as part of the	Network Rail will manage the reporting of all performance management on HAL’s behalf. HAL & NR have yet to establish the exact processes and procedure between them. These will be resolved prior to the start of Crossrail services	Part B now redrafted – Sponsors reviewing

	<p>charging system to encourage railway undertakings and the infrastructure manager to minimise disruption and improve the performance of the railway network.” As infrastructure manager of the Heathrow Rail Infrastructure (as acknowledged by HAL through the issuing of the HAL Network Statement in an attempt to satisfy regulation 11 of the Rail Regulations 2005) HAL (and not Network Rail) is required to establish a performance scheme. Necessarily, this will involve the monitoring of performance of the Heathrow Rail Infrastructure (and trains operating on it). HAL cannot therefore have no obligations or requirements in relation to performance monitoring in the HAL Network Code (even if it ultimately chooses to subcontract those obligations to Network Rail);</p> <p>52.2.2 in any event, in relation to the Heathrow Rail Infrastructure, the user of that infrastructure has a contract only with HAL and not with Network Rail. Performance monitoring obligations (including the incorporation of the Delay Attribution Guide) must be between HAL (as infrastructure manager and the party granting access) and the user of the Heathrow Rail Infrastructure;</p> <p>52.2.3 HAL’s proposal is inconsistent with its statement in paragraph 2.3.2 of the HAL Network Statement in relation to performance monitoring systems; and</p>		
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	<p>52.2.4 HAL has not articulated its position on whether the Delay Attribution Guide which applies on the Network Rail network will apply or whether there is intended to be a specific delay attribution guide for the Heathrow Rail Infrastructure. This is another example where HAL has failed to properly articulate its proposals in the Consultation.”</p>		
<p><b>Part C</b></p>	<p><b>52.3</b> “In the HAL Network Code, just one sentence has been included:  “Proposed changes to the HAL Network Code will be notified through industry consultation as and when required.” This is fundamentally unacceptable to TfL for the following reasons:  52.3.1 it is inevitable that modifications will be required to the HAL Network Code from time to time. Accordingly, it is essential from a practical perspective that a process is included for making any such modifications;  52.3.2 it is important that not just HAL can make proposals to modify the HAL Network Code but other users of the Heathrow Rail Infrastructure and, of course, ORR. A process needs to be included to facilitate this;  52.3.3 Part C forms part of a contractual relationship between HAL and each user of the Heathrow Rail Infrastructure but only in relation to the Heathrow Rail Infrastructure. It does not form a contractual relationship with Network Rail or a link to Network Rail’s consultation process</p>	<p>Noted for review</p>	<p>Part C redrafted – Sponsors reviewing - CLOSED</p>



	<p>for amending its network code. The Network Rail Network Code is different to the HAL Network Code. If it is proposed to adopt a similar process to Network Rail, it is this similar process which should be detailed in the HAL Network Code which will apply between HAL and each user of the Heathrow Rail Infrastructure;</p> <p>52.3.4 HAL’s proposal is to “notify” users of changes to the HAL Network Code which does not suggest a collaborative or consultative approach, which TfL considers to be required as it will amend a contractual relationship;</p> <p>52.3.5 in any event, TfL notes that the HAL Network Code itself refers to there being a Part C or concepts which exist in Network Rail’s equivalent of Part C (for example, the definition of “Class Member”, the HAL ADRR refers to “Band; Class; Franchised Passenger Class [ ]” and paragraph 3 of Part H of the HAL ADRR also refers to the Class Representative Committee process). In addition, paragraph 68 of Part J of the HAL ADRR refers to the HAL ADRR being amended in accordance with Part C – as currently drafted, there is no process in Part C; and</p> <p>52.3.6 there is no process to change the HAL ADRR as the process for changing the access disputes resolution rules on the national network is governed by Part C of the Network Rail Network Code.</p>		
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	In relation to Part C, TfL considers that HAL should propose a process for modifying the HAL Network Code and ancillary documents. TfL accepts that a detailed “Class Representative Committee” approach (as is the case with Network Rail) is not likely to be proportionate for the Heathrow Rail Infrastructure given the number of likely users of the infrastructure. However, some form of consultative process is required – perhaps akin to the Part C process set out in HS1 Limited’s network code.”		
<b>Part E</b>	<b>52.4</b> “There is no Part E, which in the Network Rail and 52.4 HS1 Limited network codes relates to environmental protection. This has not been included by HAL without any explanation for the rationale for doing so. TfL considers it to be essential that full and proper regard is given to environmental protection given the operation of railway infrastructure and trains could cause “Environmental Damage”. The proposal that a Part E should not be included suggests (in the absence of any explanation) that HAL will have no regard to the environment in performing its operations. TfL objects to such an approach.”	HAL has no plans to change at the current time	No further response - CLOSED
<b>Part L</b>	<b>52.5</b> “Part L of the Network Rail and HS1 Limited network 52.5 codes deal with performance and parties working together to continuously improve performance. The Network Rail Network Code also addresses local outputs, which is understandable in the context of a large network.	HAL expects to have local arrangements	Agreement was reached with Sponsors that Part L is not required and that local arrangements will be put in place such as the JPIP scheme - CLOSED

	No equivalent to Part L is proposed in the HAL Network Code. In this respect, TfL repeats its comments on Part B set out in paragraph 52.2 above.”		
<b>Regulatory Status</b>	52.6 “TfL notes that HAL has removed most references to it holding a network licence, presumably because the Exemption Order does not require it to have a network licence. However, a confusing reference to HAL holding a network licence remains in Condition GA2. TfL questions whether HAL will hold a network licence and, if it will not, where concepts which are typically found in a network licence will be included (such as a requirement to hold insurance, dispute resolution, customer facing obligations). It is also important to ensure (as a network licence ordinarily would) that restrictions are placed on cross-subsidisation with other (non-rail) business, which will be particularly important in the context of HAL’s business and the wider airport business. Similarly, Part G of the HAL Network Code refers to “closures of lines which are covered by the statutory procedures under the Act” which may not be applicable in the context of the regulation or the inherent nature of the Heathrow Rail Infrastructure.”	References to Network Licence will be removed  Noted for review	Discussion has been held with the Sponsors and there is no further response at this time from HAL - CLOSED
<b>Compensation for exercise of Part J rights</b>	52.7 “TfL notes that whilst HAL has followed some of Network Rail’s equivalent to Part J, it has not proposed including rights of compensation	HAL has no plans to change at the present time	No further response - CLOSED

	for when access rights are sacrificed. TfL considers that compensation should be offered by HAL when it makes an adjustment to access rights of a user of the Heathrow Rail Infrastructure.”		
<b>Concession</b>	<b>52.8</b> “There are a number of references in the HAL Network Code to franchise or franchising authority, which appear to have been adopted from the Network Rail Network Code. In the context of the Heathrow Rail Infrastructure, TfL considers it to be more appropriate to refer to concession or concessioning authority. As HAL notes, HEOC is exempt from the requirement to be franchised under the 1993 Act. TfL, through RfL, lets the Crossrail services under a concession agreement rather than a franchise agreement and accordingly it would be appropriate for references to be updated to reflect this. As far as can reasonably be foreseen at this stage, there will be no franchised operator using the Heathrow Rail Infrastructure.”	It may be appropriate to add concessions – noted for review	TBD
<b>Impact of Vehicle Change</b>	<b>52.9</b> “Having reviewed the HAL Network Code alongside the Network Rail Network Code, TfL is concerned by explanatory note B, in which it is suggested that a Vehicle Change need only be accepted by HAL before it can be implemented. In the Network Rail Network Code, it is made clear that it must also be accepted by “those	Noted for review	TBD

	Access Beneficiaries whom it will affect”. If a Vehicle Change is likely to have an impact on other users of the Heathrow Rail Infrastructure, it is important that those other users have an input into the process and formally accept the change. It may be that this is an oversight on HAL’s part and that it is intended that all parties who may be affected by a Vehicle Change have to accept the change before it can be implemented. If this is the case, it should be made clear in the explanatory note.”		
<b>Timetabling process</b>	<b>52.10</b> “The timetabling process set out in Annex 1 to Part D of the HAL Network Code appears to be inconsistent with HAL’s proposals in <i>relation</i> to timetabling in the HAL Network Statement.”		
<b>Non-inclusion of TfL</b>	<b>52.11</b> “There are a number of provisions of the Network Rail Network Code which give rights to TfL to receive certain notifications or to be consulted. TfL observes that HAL has not included TfL within the scope of such provisions in the HAL Network Code and considers that it should be <i>included</i> in such provisions. These include notices given by ORR (condition A4.1(b)(i)), notification of Vehicle Change, notice of details of a proposed variation to the Heathrow Rail Operational Code and TfL giving notice it wishes to be consulted on any matter concerning the Heathrow Rail Operational Code.”	HAL has no plans to change at the current time	No further response - CLOSED
<b>One stop shop</b>	<b>52.12</b> “TfL notes that, when compared with the Network Rail and HS1 <i>Limited</i> network	50.25 refers	No further response - CLOSED

	statements, HAL has deleted all references to the one stop shop service. TfL reiterates its comments in relation to the HAL Network Statement on the one stop shop service and considers that an equivalent approach should be taken in the HAL Network Code.		
<b>Definition of “HAL” and “HAL infrastructure”</b>	<b>52.13</b> “HAL appears to have incorrectly set out its own company name in the definition of “HAL” which refers to HAL Airport Limited rather than Heathrow Airport Limited. Further, the definition of “HAL infrastructure” should make clear that it relates to the rail- <i>related</i> infrastructure only (i.e. the Heathrow Rail Infrastructure) and not the wider airport infrastructure.”	Unable to find any reference to “HAL Airport Limited” in the document. Heathrow Airport Limited is the owner of the Heathrow Spur infrastructure which is clearly defined in the Glossary.	No further response - CLOSED
<b>ORR</b>	<b>52.14</b> “TfL questions whether ORR will publish separate “ORR HROC Criteria” which is referred to in Part H of the HAL Network Code.”	The standard ORR Criteria will apply.	HAL will amend the wording in Part H to reflect “ORR ROC Criteria” - CLOSED
<b>Statutory references</b>	<b>52.15</b> “HAL should carefully review each of the statutory references set out in the HAL Network Code to ensure they remain appropriate. For example, there are references to the Companies Act 1985 which need to be updated to reflect the relevant provision of the Companies Act 2006.”	Noted – will be updated.	This requires a legal search to ensure all references are accurate and up to date - CLOSED
<b>Depots</b>	<b>52.16</b> “In the HAL Network Statement, HAL makes clear that no depot forms part of the Heathrow Rail Infrastructure. However, references to “light <i>maintenance</i> depot” are to be found in the HAL Network Code, which is confusing for prospective users.”	Noted – review context of each	References will be deleted as part of final document review - CLOSED

<p><b>Possessions Strategy Notices, Calendar of Events, Expedited Procedure Strategic Planning Route and Local Output</b></p>	<p><b>52.17</b> “Whilst TfL acknowledges that an equivalent is included in the Network Rail Network Code, TfL queries whether the provisions relating to possessions strategy notices are proportionate in the context and size of the Heathrow Rail Infrastructure. TfL wonders whether there would ever be a programme of Restrictions of Use extending over more than a year or a period containing two or more Timetable Change Dates. For the same reasons, TfL similarly questions the need for the “Calendar of Events and Event Steering Group” provisions in Part D of the HAL Network Code, particularly given HAL’s statement in the HAL Network Statement relating to when maintenance work takes place (please see TfL’s comments in paragraph 50.9) TfL also wonders whether there is need for the “Expedited Procedure”, “Strategic Planning Route” or “Local Output” concepts given the relative size and likely number of users of the Heathrow Rail Infrastructure.”</p>	<p>Noted – review context again and check references</p>	<p>Drafting update in progress - CLOSED</p>
<p><b>Missing Text</b></p>	<p><b>52.18</b> “Text may erroneously have been deleted from the Network Rail equivalent document when preparing the condition immediately following <b>Condition</b> J2.4.2, where the “pre-existing obligations of confidence” wording and first line of the successive condition appear to have been omitted.”</p>	<p>Noted - review</p>	<p>TBD</p>
<p><b>Scotland</b></p>	<p><b>52.19</b> “There are references in the HAL Network</p>	<p>Any reference to Scottish legal system will</p>	<p>No further comment - CLOSED</p>

	Code to the Scottish legal system, including the Court of Session which TfL does not consider to be relevant in the context of the Heathrow Rail Infrastructure entirely located in England. TfL thinks this could be as a result of using the Network Rail Network Code as the starting point.”	be removed	
<b>HAL ADRR</b>			
<b>General</b>	<b>53.1</b> “TfL notes that HAL has proposed its own set of dispute resolution rules, annexed to the HAL Network Code, which are separate and distinct from those annexed to the Network Rail Network Code for the national network. TfL questions whether this approach is appropriate given the size of the Heathrow Rail Infrastructure and suggests it may be more appropriate (and less costly) for HAL to use the wider industry dispute resolution process (with appropriate amendments being made to such process where necessary). TfL considers there to be a lack of clarity over how disputes will be resolved. It is not clear from the Documentation whether there will also be a separate timetabling panel to address timetabling disputes as anticipated in Part D of the HAL Network Code, although this appears to be the implication. If so, it is unclear how these bodies will be established. Clarity is needed over the relationship between the HAL process and the wider industry process where the dispute spans across the Heathrow Rail	HAL expects the industry process will be adopted for HAL.  Context to be reviewed – further discussion between NR & HAL is required	ADRR drafting updated post NR discussion - CLOSED



	<p>Infrastructure and the Network Rail network. It is also not clear whether the resolution processes would be bound by previous decisions on the Network Rail network. TfL therefore considers that further explanation needs to be given by HAL on the rationale and operation of the proposed HAL ADRR. In the interests of reducing the costs of using the Heathrow Rail Infrastructure, TfL considers a more proportionate approach would be preferable.”</p>		
<p><b>Governance</b></p>	<p><b>53.2</b> “The Class Representative Committee established pursuant to Part C of the Network Rail Network Code is a vital body within the national rail industry architecture and its composition and constitution the subject of careful consideration at the time of rail privatisation. This was to ensure that no particular constituency held sway or could be unfairly disadvantaged in the work of the committee. Similar considerations applied to the committee established under the industry access dispute resolution rules, which therefore has the same electoral college, drawn from four classes of party (Network Rail, franchised passenger operators, non-franchised passenger operators and non-passenger operators). In Chapter J of the HAL ADRR, HAL proposes it will have two members on the committee which manages the operation of the HAL ADRR (but replicated the other constituencies from the standard industry</p>		<p>ADRR drafting updated post NR discussions - CLOSED</p>

	<p>access disputes resolution rules. The consequence of this is that the committee under the HAL ADRR would have just 3 members, with HAL having a two thirds majority. In addition, Part C of the HAL Network Code does not contain the provisions for the establishment of the relevant committees. The HAL ADRR also requires a quorum of 5, so that the committee established under the HAL ADRR could never conduct any business, including the appointment of the Committee Chair, the Allocation Chair or the Secretary (all as described within the HAL ADRR). This renders the HAL ADRR useless from the outset and the proposed HAL access contracts without an effective dispute resolution mechanism. There also needs to be a process for amending the HAL ADRR.”</p>		
<p><b>Timetabling pool and committee members</b></p>	<p><b>53.3</b> “TfL notes the statement made in the HAL Network Code that the committee established under the access disputes resolution rules applicable on the wider network will provide services under the HAL ADRR. However, no explanation is provided in either the HAL Network Statement of the HAL ADRR as to how this will be achieved. In fact, the HAL ADRR is inconsistent with the HAL Network Statement which anticipates the establishment of a Committee specific to the operation of the HAL ADRR. Chapter H of the HAL ADRR sets out how the timetabling pool will be constituted and</p>	<p>53.1 refers</p>	<p>ADRR drafting updated post NR discussions - CLOSED</p>

	<p>includes representatives from “each of the three Bands of the Franchised Passenger Class”, “each of the two Bands of the Non-Passenger Class”, “the Non-Franchised Passenger Class”; and HAL. Firstly, TfL observes that the class concept is not one which has been used in the HAL Network Code (nor does it seem reasonable to include it for a network the size of the Heathrow Rail Infrastructure) and so it is impossible to determine who the Timetabling Pool would be. Secondly, if HAL’s proposals were to be implemented, the balance of the Timetabling Pool would be in favour of HAL, with 4 HAL representatives and at least one from HEOC (a company within the same group). This does not support the impartiality of the Timetabling Pool and has significant concerns about the arrangement. TfL has similar concerns relating to the constitution of the Committee as described in Part J of the HAL ADRR.”</p>		
<b>Delay Attribution Board</b>	<p><b>53.4</b> “The definition of “Delay Attribution Board” refers to Condition B6.2 of the HAL Network Code. As noted in paragraph 52.2, HAL has not proposed a Part B (which TfL disagrees with) and therefore there is currently no process to appoint a Delay Attribution Board for the Heathrow Rail Infrastructure. It seems disproportionate for a separate Delay Attribution Board solely for the Heathrow Rail Infrastructure to be appointed. In</p>	Noted – for review	Part B draft updated - CLOSED

	connection with this, TfL notes that no clarification has been given over whether there will be a separate delay attribution guide for the Heathrow Rail Infrastructure or in general what the Heathrow Rail Infrastructure-specific performance processes will be.”		
<b>Charging</b>	<b>53.5</b> “It is not clear from the Consultation how the dispute resolution services contemplated by the HAL ADRR will be paid for generally (other than in the context of a particular dispute). The HAL Network Statement does not list this as part of the proposed “Common Cost Charge” which is levied on users of the Heathrow Rail Infrastructure, so TfL assumes that this is a cost which HAL will itself bear. TfL notes paragraph J51 of the HAL ADRR but it is not clear what happens where a party paying the Railway Safety Levy enters into a contract other than as a requirement of a regulated contract for the use of a network. What will happen in the case of MTR Crossrail, for example? The Railway Safety Levy will be paid in respect of the Network Rail network but the track access contract in respect of the Heathrow Rail Infrastructure will not be a regulated contract given the existence of the Exemption Order. TfL therefore considers that HAL should make clear how the dispute resolution services will be paid for.”	Noted – for review	HAL responded to Sponsors - CLOSED
<b>Insufficient</b>	<b>53.6</b> “TfL considers that insufficient attention has	Noted – for review	ADRR drafting updated post NR

<b>attention</b>	<p>been given by HAL to the development of the HAL ADRR. For example, the definition of “Access Conditions” refers to the “National Station Access Conditions, the Independent Station Access Conditions or the Depot Access Conditions”. These refer to Network Rail documents and not to the HAL SACs which is has proposed (on which, please see TfL’s comments in paragraph 59). Indeed, as HAL states in the HAL Network Statement, there are no depots on the Heathrow Rail Infrastructure, so these references are not relevant. TfL questions the entire approach to dispute resolution adopted by HAL which is considered unworkable and expensive to administer. Effective and efficient proposals reflecting the scale of the Heathrow Rail Infrastructure and the likely number of operators needs to be made by HAL for dispute resolution.”</p>		discussions - CLOSED
<b>Inconsistencies</b>	<p><b>53.7</b> “There are other inconsistencies with the HAL Network Code which include:  53.7.1 HAL does not permit the service of documents by fax in the HAL Network Code (in contrast to the Network Rail position) but does allow the service of notice by fax under the HAL ADRR; and  53.7.2 there are numerous references to Conditions of the HAL Network Code which do not exist (e.g. references to Parts B and C of the HAL Network Code, including that the HAL ADRR</p>	Noted – review inconsistencies	Documents will; be reviewed and amended to remove any inconsistencies - CLOSED

	can be amended in accordance with Part C).”		
<b>ORR</b>	<b>53.8</b> “The HAL ADRR places a number of obligations on the ORR which go beyond the general right of appeal set out in regulation 29 of the Rail Regulations 2005. TfL queries whether the ORR has had chance to review and accept the additional roles which HAL purports to give to it under these separate dispute resolution arrangements.”	Noted	ADRR drafting updated - CLOSED
<b>Definition of Access Dispute Resolution Rules</b>	<b>53.10</b> “The definition should make clear that it relates to the regulation of disputes only in relation to the Heathrow Rail Infrastructure (as currently drafted, it is potentially wider).”		ADRR drafting updated – check this has been resolved - CLOSED
<b>TRACK ACCESS AGREEMENT</b>			
<b>Discrimination</b>	<b>55.1</b> “HAL’s proposed approach is discriminatory, in favour of HEOC. Clause 2.3 of the HAL Track Access Contract indicates that HEOC will not be party to all of the HAL Network Code, despite using the same Heathrow Rail Infrastructure (the position of London Underground is different, given it uses different track and stations). From an operational perspective, it is essential that all users of the Heathrow Rail Infrastructure are bound by the same multi-lateral practical arrangements set out in the HAL Network Code (subject to TfL’s comments in Part 7). It is discriminatory if additional obligations are placed on all users of the Heathrow Rail Infrastructure other than HEOC (being in the same group of	<b>Amendments:</b> The HEOC exemption from the Network Code has been removed from Clause 2.3, as requested.	No further response - CLOSED

	companies as HAL).”		
<b>Restrictions of Use</b>	<b>55.2</b> “It is unacceptable that schedule 4 of the HAL Track Access Contract has been marked “Not used” with some (but not all) cross references to schedule 4 being deleted (as compared with the Network Rail and HS1 Limited template forms). HAL is selling – and a user will be buying – rights to use the Heathrow Rail Infrastructure under the HAL Track Access Contract. If HAL subsequently puts in place arrangements which prevent a user from using those rights and, most importantly, preventing a user’s customers from using its services, compensation will be required. At the very least, HAL should compensate a user for its additional costs and loss of revenue experienced as a result of the imposition of a restriction of use. This is something which must be addressed by HAL as it is of key importance to the operation of a railway network and it is inevitable that at some point in future an unplanned restriction of use will need to be imposed by HAL.”	<b>Amendments:</b> To avoid confusion, all references to Schedule 4 within the Track Access Contract have been deleted.	No further response - CLOSED
<b>Charging</b>	<b>55.3</b> “The charging arrangements are not transparent or certain – and TfL refers to its comments in Parts 4 and 5 on this. In particular, in the context of the HAL Track Access Contract, clause 7 (which refers to schedule 7) will need to be reinstated and the arrangements set out in schedule 7 need considerable more clarity. As currently drafted, schedule 7 is difficult to	<b>Comments:</b> TfL’s assertion that the charging provisions within the Track Access Contract (“ <b>TAC</b> ”) are unclear and difficult to understand is unfounded. The specific concerns expressed in TfL’s consultation response expose their failure to adequately review the provisions of Schedule 7.	No further response - CLOSED

	<p>understand and there is no certainty over when and what needs to be paid. For example:</p> <p>55.3.1 there is nothing indicating when charges are paid;</p> <p>55.3.2 it is not clear whether charges are levied on a per “Railway Period” basis or annually or some other frequency;</p> <p>55.3.3 there is nothing included in relation to how long a user has to pay the access charges (or repercussions if a user does not);</p> <p>55.3.4 charging arrangements should not include “deductions agreed by HAL as being due under Schedule 8”, as schedule 8 deductions should result from an objective process rather than needing HAL’s subjective consent;</p> <p>55.3.5 the “direct debit” wording is inappropriate and an invoicing and payment option (common with other track access agreements) should instead be included which is consistent with the provisions in clause 16 on payment;</p> <p>55.3.6 charges should be expressed to be on a per movement basis and a formula included to work out the overall amounts payable (e.g. how are the number of movements worked out – is this from a timetable or from what has actually operated in practice or some other method?);</p> <p>55.3.7 TfL considers that charges should vary with usage and should reflect the characteristics of the train in questions and its impact on the</p>	<p>In particular, HAL cannot understand TfL’s confusion in paragraph <b>55.3.3</b> of its response. Paragraph 2 of Schedule 7 clearly states that “all invoices shall be paid within 28 days of their receipt”. Furthermore clause 13.2 outlines the position with respect to unpaid invoices</p> <p>TfL’s concerns at paragraphs <b>55.3.6</b> and <b>55.3.7</b> of its response are also without merit. The Track Access Charge is clearly expressed as being per movement in Table 1 at paragraph 4 of Schedule 7, and therefore does indeed vary according to usage.</p> <p><b>Amendments:</b></p> <p>In response to TfL’s comments, the following amendments have been incorporated in the Track Access Agreement:</p> <ul style="list-style-type: none"> <li>• The wording at clause 7 has been reinstated in order to properly affect Schedule 7;</li> <li>• An additional paragraph 5 has been inserted into Schedule 7 which determines the position in the case of disputed invoice amounts. This gives users the</li> </ul>	
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	<p>infrastructure (please see paragraph 32 on this); 55.3.8 linked with Tfl’s comments in the “periodic review” section (see paragraph 55.6), HAL should not be able to unilaterally review and adjust charges each year: there should be parameters for doing so, an agreed process for resolution of disputes and ORR supervision of negotiations on the level of infrastructure charges, as required by regulation 28(3) of the Rail Regulations 2005; and 55.3.9 references to “Track Charges” found in the Network Rail and HS1 Limited model forms of contract should be inserted in the HAL Track Access Contract wherever relevant.”</p>	<p>ability to dispute invoice amounts (including deductions agreed under Schedule 8). HAL hopes this deals with Tfl’s concerns relating to the wording in paragraph 1;</p> <ul style="list-style-type: none"> <li>• References to “Track Charges” have been reinstated where relevant (including: clauses 1.1, 6.4.2, Schedule 6 para 1.1(d), para 2.2(e)(ii), para 2.3(c), para 3.3(c)(ii));</li> <li>• A definition of Train Movement has been inserted into Schedule 7, paragraph 4 to clarify what constitutes a movement for the purposes of the Track Charges;</li> <li>• Clarification that invoices are to be issued by HAL monthly in appears has been inserted at Schedule 7, paragraph 2.</li> <li>• Direct Debit may be used for payment hence its inclusion.</li> </ul>	
<p><b>Performance Regime</b></p>	<p><b>55.4</b> “The performance regime proposed in schedule 8 of the HAL Track Access Contract is not acceptable for the following reasons: 55.4.1 the proposed performance regime appears to be the current performance regime for the HEOC “Heathrow Express” service and has not been tailored to the circumstances of the Heathrow Rail Infrastructure;</p>	<p>The performance regime mirrors the existing arrangements operating on the Heathrow Spur which were specifically tailored for that infrastructure. The performance measures fully comply with the regulations in that they incentivise the most efficient uses of the infrastructure and minimise disruption.</p>	<p>Under review – HAL are likely to propose an amended regime after more with interested parties.</p>

	<p>55.4.2 the proposed performance regime set out in the HAL Track Access Agreement is inconsistent with the proposals set out in the HAL Network Statement;</p> <p>55.4.3 the proposed regime does not meet the requirements of regulation 14 of the Rail Regulations 2005 which requires the infrastructure manager to <i>“establish a performance scheme as part of the charging system to encourage railway undertakings and the infrastructure manager to minimise disruption and improve performance of the railway network”</i>. HAL’s proposed regime applies <i>“between Paddington Station and CTA”</i> and so is not a performance regime for the Heathrow Rail Infrastructure (indeed, it does not appear to extend to the other stations at the airport). TfL considers that HAL needs to fundamentally rethink the performance regime it proposes to apply, for the Heathrow Rail Infrastructure only (the Network Rail performance regime being separate and distinct) in light of this and TfL’s other comments. TfL notes that, as part of this, HAL will need to consider how its performance regime interacts with (but remains independent of) the Network Rail performance regime for the Network Rail network;</p> <p>55.4.4 the proposed performance regime is ill-defined as <i>“performance achieved”</i> (which</p>		
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	<p>triggers performance payments) is not adequately described;</p> <p>55.4.5 TfL strongly disagrees with the proposed levels of performance payment and how the bonus/penalty regime has been structured by HAL (including that it has been structured on an annual, rather than periodic basis);</p> <p>55.4.6 TfL firmly disagrees with the presumption included in the HAL Track Access Contract that delays accrued on the Heathrow Rail Infrastructure are deemed to have been caused by a Train Operator Event of Default unless it can be shown that they are caused by a HAL Event of Default:</p> <p>(a) Firstly, any delay should be allocated on the basis of pre-agreed delay attribution principles and a delay attribution guide (in relation to which HAL has not set out its proposals) rather than a presumption of it being caused by the Train Operator.</p> <p>(b) Secondly, causing a delay should not constitute an “Event of Default” as this can lead to suspension of track access rights and, ultimately, termination of the HAL Track Access Contract. A delay caused by either party should not constitute an Event of Default.</p> <p>55.4.7 how “punctuality” is assessed and its relationship with delay attribution principles is not clear from paragraphs 3 and 4 of schedule 8 – HAL has also not defined a “discountable delay”</p>		
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	<p>which is an important concept in the context of this schedule;</p> <p>55.4.8 it would be helpful for the HAL Track Access Contract (and wider Documentation) to use the “Railway Period” concept for calculations, given this is the process more generally adopted across the industry (including the adjoining Network Rail network);</p> <p>55.4.9 TfL disagrees with paragraph 4.3 of schedule 8 (relating to 16/17 minute journey times from Paddington to CTA) which appears to be included just for HEOC services, relates to the Network Rail infrastructure which is not the subject of the HAL Track Access Contract and is not workable in the context of stopping services to the airport;</p> <p>55.4.10 the concept of “Major Engineering Works” has been included in paragraph 4.4 of schedule 8 which suggests (reasonably) these may be required from time to time. As noted in paragraph 50.9 of its comments on the HAL Network Statement, no provision has been included for how engineering works are determined and, importantly, as noted in paragraph 55.2, HAL has not included any provisions in the HAL Track Access Contract which relate to compensation for restrictions of use. These are key issues which need to be addressed by HAL;</p> <p>55.4.11 TfL disagrees with the (overly) simplistic</p>		
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	<p>proposal in relation to cancellations, which are not well-defined or transparent, and disagrees with the suggestion that a delay of 10 minutes or more automatically constitutes a cancelled train regardless of whether that train actually operates; and 55.4.12 TfL wonders how paragraphs 7.2, 7.4 and 7.5 and 11 of Schedule 8 are relevant to the contractual arrangement between HAL and any operator other than HEOC (as they appear to be tailored to the specific nature of the HEOC service).</p>		
<p><b>Limitation on Liability</b></p>	<p>55.5 “the limitation on liability proposed by HAL under clause 11.5 of the HAL Track Access Contract is too limited and should follow the Network Rail model form equivalent. The Network Rail position is that liability under schedules 4 (Restrictions of Use), 5 (The Services and the Specified Equipment), 7 (Track Charges and Other Payments) or 8 (Performance Payments) does not fall within the cap on liability set out in schedule 9. TfL considers HAL’s position to be unreasonable as restrictions of use and performance payments will generally be within HAL’s control and should not be subject to the overall cap on liability. In relation to schedule 9 of the HAL Track Access Contract, HAL’s drafting is confusing, with two different maximum levels of liability specified (£51 million and £155 million) and “Retail Prices Index” needs to be defined (in</p>	<p><b>Amendments:</b> In response to TfL’s concerns:</p> <ul style="list-style-type: none"> <li>• the Network Rail model form position relating to liability under Schedules 5, 7 and 8 has been reinstated into the HAL Track Access Agreement at clause 11.5. HAL’s liability under these schedules is no longer subject to the limitations set out in Schedule 9.</li> <li>• A definition of “RPI” has been inserted into clause 1.1.</li> <li>• To remove the discrepancy highlighted by TfL, HAL’s liability cap in the first Contract Year under Schedule 9, paragraph 1(a) has been amended to £155m.</li> </ul>	<p>No further response - CLOSED</p>

	the Network Rail model form contract, it is defined in schedule 7, but this is not defined in the HAL Track Access Contract). TfL requires clarity on what HAL’s actual proposal is but observes that this level of liability seems very high for a network the size of the Heathrow Rail Infrastructure.”		
<b>Periodic Review</b>	<b>55.6</b> “the process for reviewing the access charges to be levied by HAL is unclear. The definition of “access charges review” remains in the HAL Track Access Contract and refers to Schedule 4A of the 1993 Act. Schedule 4A of the 1993 Act sets out the Network Rail periodic review process and the way it has been drafted means it can only apply to Network Rail, so this cannot be appropriate in the HAL Track Access Contract. However, TfL considers that an alternative (possibly contractual) mechanism is required in the HAL Track Access Contract to ensure HAL cannot unilaterally impose amendments to charges and that there is a formal, prescribed process (with appropriate factors to consider) to amend the access charges.”	<p><b>Comments:</b> Paragraph 4 of Schedule 7 provides that the Track Charges per movement will be reviewed on an annual basis. HAL believes that this review mechanism is sufficient in these circumstances.</p> <p><b>Amendments:</b> The “access charges review” definition has been deleted. TfL is correct to point out that this definition is not relevant.</p>	No further response - CLOSED
<b>Traction Electricity Rules</b>	<b>55.7</b> “TfL is concerned at the many references to “Traction Electricity Rules” in the HAL Track Access Contract when HAL’s proposal (as set out in the HAL Network Statement) is that TfL will procure traction electricity from Network Rail directly.	<p><b>Amendments:</b> All references to Traction Electricity Rules have been deleted form the Track Access Agreement.</p>	Covered by previous comments on Traction charging process, amendments to NS and required reflection within the TACs covered in 55.2 - CLOSED

	<p>The current drafting of the HAL Track Access Contract is confusing in this respect. The arrangements proposed by HAL in the HAL Network Statement would suggest two bi-partite contracts between:</p> <p>55.7.1 HAL and a user of the track comprised in the Heathrow Rail Infrastructure (in respect of track access except for traction electricity); and</p> <p>55.7.2 Network Rail and a user of the track comprised in the Heathrow Rail Infrastructure (in respect of traction electricity).</p> <p>As Network Rail is not party to the HAL Track Access Contract, this would suggest that all traction electricity-related matters should be dealt with elsewhere. Alternatively, if HAL is to procure traction electricity from Network Rail on behalf of users (as part of its responsibilities as infrastructure manager) then this arrangement needs to be made clear in the HAL Track Access Contract and a HAL-specific set of traction electricity rules is likely to be required. The status of the “Traction Electricity Rules” therefore needs some clarification – particularly as elements are incorporated into the HAL Track Access Contract.”</p>		
<b>Regulation</b>	<p><b>55.8</b> “HAL appears to have confused itself as to how it will be regulated or whether it will be regulated. This confusion makes the HAL Track Access Contract difficult to understand. For example, the recitals refer to HAL being “required</p>	<p><b>Comment:</b> Please see the response to paragraph 58.1 below for further discussion on the Heathrow Express Exemption Order and the appropriate regulatory structure.</p>	<p>No further response required - CLOSED</p>

	to” grant a user access to the track, reflecting the process set out in section 18 of the 1993 Act (which TfL had understood would not apply in respect of the Heathrow Rail Infrastructure given the existence of the Exemption Order). There are also references to “HAL’s network licence” and obtaining ORR consent to modifications and other arrangements (which may not be required if the Heathrow Rail Infrastructure is to be unregulated). Further clarity is needed from HAL on the proposed regulatory position.”	<p><b>Amendments:</b></p> <p>In response to TfL’s concerns:</p> <ul style="list-style-type: none"> <li>• the reference to the HAL network licence within clause 1.2(I) has been deleted; and</li> <li>• “Required to” has been deleted and replaced with “has agreed to” within the Recitals.</li> </ul>	
<b>Claims Allocation and Handling Agreement</b>	<b>55.10</b> “The definition of “Claims Allocation and Handling Agreement” suggests it has been approved by ORR. Even if it has already been approved by ORR, however, it has not been submitted to consultees as part of the Consultation. Given the importance of the matters covered by the CAHA, TfL considers it essential to be provided with information on the proposed arrangements, as well as the proposed form of agreement.”	The industry standard CAHA (approved by the ORR) will be used.	HAL’s application to CAHA has been submitted - CLOSED
<b>Schedule 5</b>	<b>55.11</b> “In the absence of an accompanying document to the Consultation which sets out HAL’s rationale for its proposed approach to the Heathrow Rail Infrastructure, it is difficult to consider why HAL has taken the approach it has to defining access rights. TfL: 55.11.1 questions whether the approach taken by HAL is proportionate for the Heathrow Rail Infrastructure (e.g. references to calling patterns,	<p><b>Comments:</b></p> <p><b>Approach:</b> Schedule 5 of the draft Track Access Agreement represents an already simplified version of the Network Rail template document. HAL considers that the approach within Schedule 5 is proportionate in the circumstances.</p> <p><b>Firm Rights:</b> TfL’s comments in paragraph</p>	No further response - CLOSED



	<p>journey time protection, platform rights, connections and departure time ranges);</p> <p>55.11.2 queries why HAL has included the HEOC, Heathrow Connect and shuttles (including in defining the Specified Equipment) in this schedule;</p> <p>55.11.3 considers HAL is incorrect in selling Firm Rights to a “minimum” number of Passenger Train Slots as this means a train operator could have Firm Rights to an unlimited number of Passenger Train Slots (which does not make sense from a practical perspective);</p> <p>55.11.4 needs further information on HAL’s proposed flexing right and the proposed number of minutes’ flex it will have; and</p> <p>55.11.5 questions whether HAL will have its own rolling stock library or whether HAL intended to refer to the Network Rail central rolling stock library.</p>	<p>55.11.3 expose a misunderstanding of the functioning of Schedule 5 and a failure to fully review its provisions. Firm Rights to Passenger Train Slots are granted under paragraph 2.1, Schedule 5. The numbers of Train Slots granted in the Working Timetable are listed in Table 2.1. These are not expressed as “minimum” figures. The only reference to selling Firm Rights to a “minimum” number of Passenger Trains Slots is in paragraph 3.1, Schedule 5. This paragraph relates to the minimum Train Slots provided in morning and evening peak periods. Under paragraph 3.1 of Schedule 5, these “minimum” amounts must be the component parts of, <u>and not additional to</u>, the number of Train Slots granted in column 2 of Table 2.1.</p> <p><b>Flex:</b> It is clearly inappropriate to apply generic flexing rights to all services operating out of the Heathrow Stations. The number of minutes’ flex in Table 3.1 has therefore been left blank in the template Track Access Agreement. The period over which the cumulative effect of flexing shall not reduce the Train Operator’s entitlement to its full quantum of Passenger Train Slots has been inserted into the template as 60 minutes.</p>	
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		<p><b>Amendments:</b>  <b>HEOC, Heathrow Connect:</b> The HEOC and Heathrow Connect information was originally included as example information within the Schedule 5 Tables. To avoid any confusion, this has now been deleted from the draft agreement.</p> <p><b>Rolling stock:</b>  The reference to HAL’s rolling stock library has been amended to Network Rail’s rolling stock library. In addition, HAL has introduced clarification that the requirements relating to rolling stock compatibility guidelines as set out in the Heathrow Network Statement will need to be fulfilled by the Train Operator before such Contingent Rights are exercised.</p>	
<b>Concessions</b>	<b>55.12</b> “References to “franchises” in the HAL Track Access Contract should instead be to concessions let by TfL in respect of the Crossrail services. At this stage, a franchise operator using the Heathrow Rail Infrastructure is not reasonably foreseeable.”	<b>Amendments:</b> References to Franchise Agreement and Franchisees have been deleted from the Track Access Agreement.	No further response - CLOSED
<b>Stabling</b>	<b>55.13</b> “References are included in the HAL Track Access Contract to stabling but the position regarding the availability of stabling facilities has not been made clear.”	<b>Comments:</b> Stabling availability is limited at Heathrow Airport and Firm Rights cannot be granted to specific stabling facilities at specific	No further response - CLOSED

		times. Instead, specific stabling arrangements must be made between the parties, as set out in paragraph 8 of Schedule 5.	
<b>Environmental Damage</b>	<b>55.14</b> “The indemnities set out in clause 10 of the HAL Track Access Contract refer generically to “environmental damage” which (unlike in the Network Rail and HS1 Limited equivalents) is not defined. This links in with TfL’s comments on the inadequacies of the environment-related provisions in the Documentation generally – see paragraph 52.4 in relation to TfL’s comments on the deletion of Part E of the HAL Network Code as an example.”	Noted.	No further response - CLOSED
<b>Contract Year</b>	<b>55.15</b> “HAL appears to have “hard wired” the Contract Year date in to the HAL Track Access Contract. In order for transparency across all operators (given the context in which this definition is used) it will be important for this date to be the same in each and every track access contract – and should apply for contracts between HAL and HEOC as well.”	Noted.	No further response - CLOSED
<b>Railway Code</b>	<b>55.16</b> “Clarity is also required around the Railway Code and whether there will be a separate railway code for the Heathrow Rail Infrastructure or, if not, how Network Rail’s Railway Code will be adapted/adopted for use on the Heathrow Rail Infrastructure. This is an area on which clarification and a draft document is required”	Noted	TBD

<p><b>Notification/ consultation</b></p>	<p><b>55.17</b> “TfL considers that:  55.17.1 it should be a party to whom confidential information can be divulged under clause 14.2 of the HAL Track Access Contract (as it will be in the position of concessioning authority, rather than the Secretary of State);  55.17.2 clause 15.2 of the HAL Track Access Contract should be modified to reflect the position of TfL as concessioning authority and to recognise that TfL may take steps to “step-in” other than under section 30 of the 1993 Act (as TfL does not have the benefit of equivalent powers to the Secretary of State in this respect);  55.17.3 it (in addition to the Secretary of State) should be consulted under paragraph 7.5(b) of schedule 5 of the HAL Track Access Contract in relation to the Journey Time Review Notice (if this concept is retained in the arrangements). TfL has an interest as transport authority for London in this and considers that it should be consulted;  55.17.4 prior consultation with TfL (in addition to or rather than the Secretary of State) under schedule 10 of the HAL Track Access Contract;  and  55.17.5 giving TfL (rather than or in addition to the Secretary of State) rights under the Contracts (Rights of Third Parties) Act 1999.”</p>	<p>Noted.</p>	<p>No further response - CLOSED</p>
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<b>Modifications</b>	<b>55.18</b> "Please see TfL's 55.18 comments in paragraph 52.3 in relation to the HAL Network Code. As currently drafted, the HAL Network Code does not permit changes to the contractual documentation – so clause 2.3 of the HAL Track Access Contract is not correct. TfL considers that HAL should prepare an equivalent to Part C of Network Rail's network code, in which case this provision would make sense."	Noted	Part C redrafted – Sponsors reviewing - CLOSED
<b>Statutory references – consistency</b>	<b>55.20</b> "TfL notes that, contrary to the position in the HAL Network Code, references to the "Companies Act 1985" have been updated to refer to the Companies Act 2006 in the HAL Track Access Contract. Similarly, the HAL Track Access Contract has not been updated to refer to the Office of Rail and Road (rather than the Office of Rail Regulation) whereas the HAL Network Code generally has. This means there are currently inconsistencies between the HAL Track Access Contract and the HAL Network Code, which is incorporated in the HAL Track Access Contract, which is undesirable."	<b>Amendments:</b> TfL correctly notes that the references to the Office of Rail Regulation are out-dated. These have now been amended to the Office of Rail and Road.	No further response - CLOSED
<b>Inconsistencies</b>	<b>55.21</b> "There are other inconsistencies between the HAL Track Access Contract and the other Documentation prepared by HAL – for example, in the HAL Track Access Contract, service of invoices can take place by fax, whereas this method of service has been specifically removed	<b>Amendments:</b> <b>Fax:</b> References to service of invoices by fax have been deleted from the Track Access Contract. <b>Transition provisions:</b> Although HAL recognises that the provisions of clause 19	No further response - CLOSED

	in other provisions. The “Transition” provisions in clause 19 should also not be relevant for a new track access contract under a new regulatory regime being put in place. A number of references to freight-specific terms also appear to be included in the HAL Track Access Contract, which seems inconsistent given freight does not appear to be provided for by HAL (as TfL has inferred from other parts of the Documentation).”	may not be relevant in the context of a new regulatory regime, these provisions were retained as they had no detrimental effect of the agreement as a whole, and could form the basis of future draft Track Access agreements. To avoid any confusion, however, Clause 19 has been deleted.	
<b>Typographical errors and definitions</b>	<b>55.22</b> “In addition to all of the other issues identified in this response, there are a number of typographical errors, unused definitions, capitalised terms which have been used but not defined and general “tidying up” which needs to be undertaken by HAL. HAL will no doubt address these as part of its development of the HAL Track Access Contract following the conclusion of the Consultation.”		Documents will be reviewed before final issue - CLOSED
<b>STATION ACCESS AGREEMENT</b>			
<b>Structure</b>	<b>57.1</b> “HAL has provided little information on the stations, in terms of HAL's locus to grant access and to undertake the role equivalent to station facility owner or as to who will actually responsible for managing, operating and maintaining the fabric of the stations; and how the costs relating to each station will be accounted for and apportioned amongst users. This is considered further at paragraph 58.2	<b>Comments:</b> Heathrow Airport Limited (“HAL”) is the Freehold owner of all three Stations at Heathrow Airport. HAL will therefore be acting at Station Facility Owner for the purposes of the Station Access Agreement (“SAA”). This position is reflected in the SAA and HAL Station Access Conditions (“SAC”) as currently drafted.	Further discussions are planned between Sponsors and HAL in the coming weeks.  The response by HAL is sensible and logical.  It is clearly stated on the front page of the SAA template and

	below.”	<p>Although HAL has ultimate responsibility for the management, operation and maintenance of the Stations under the SAA and SAC, HAL will be entering into a separate Station Management Agreement with Heathrow Express Operating Company (“<b>HEOC</b>”) under which HEOC will be contracted to provide these services day-to-day. The possibility of such an arrangement is acknowledged within the Station Access Agreement. Clause 7.6.1 expressly states that the Station Facility Owner may subcontract any of its obligations under the Station Access Agreement.</p>	<p>again within Schedule 1 contract particulars that HAL is the Station Facility Owner. The first paragraph of HAL’s comment provides more detail on HAL’s locus to grant access.</p> <p>The Rail Regulations 2005/15 specifically mentions service providers and other bodies who perform Infrastructure Manager (IM) duties, so it is implicit the SFO (the station IM) can employ sub-contractors. Para 7.6.1 provides the mechanism within the SAA for HAL to subcontract activities. The second paragraph of HAL’s comment provides more detail on who will take the role of managing and operating the stations</p>
<b>Safety</b>	<p><b>57.2</b> “As a consequence of there being minimal information available on the stations as noted in paragraph 57.1 above, there is a lack of clarity over who has responsibility for safety at the stations. As noted in paragraph 58.2 below, HAL has removed the requirement for it to hold a safety authorisation as a condition precedent to the Station Access Agreement although it is a</p>	<p><b>Comments:</b> See above in response to 57.1. As HEOC is the party managing and operating the station on a day to day basis it is the party that will hold the safety authorisation. The effect of Clause 1.3, however, results in references to the Station Facility Owner to include references to any sub-contractors</p>	<p>It is a requirement under ROGS that any party who manages and operates a station to hold a safety authorisation. HAL stations are operated and maintained by HEOC on behalf of HAL under a Station Management Agreement. HEOC holds the</p>

	<p>requirement under ROGS that a safety authorisation is obtained by any party that manages and operates a station. This raises an implication that another party will perform that role (see paragraph 58.2.3) but who or on what basis is not clear.”</p>	<p>so appointed. The conditions precedent requirement has therefore been reinstated.</p>	<p>Safety Authorisation for these stations under the ROGS. Para 2.1.3 has been reinstated, however after Station Facility Owner there will be added wording to include: “or a third party to whom HAL has subcontracted the management and operation of the stations in accordance with para 1.3 and para 7.6”.</p>
<p><b>Missing information (Schedule 2)</b></p>	<p><b>57.3</b> “There are many areas where HAL has not provided Information referred to in the HAL Stations Documentation which would be key to both TfL’s and prospective users' understanding of the proposed arrangements...”</p>		<p>No further response - CLOSED</p>
	<p>1.1 Information relating to charging set out in Part 4 and Part 5 of this response;</p>	<p>Noted.</p>	
	<p>1.2 Missing information in HAL Annexes;</p>	<p><b>Comments:</b> Although TfL’s consultation response does not clearly outline what information it believes is missing from the Annexes, HAL acknowledges that there is information yet to be inserted into the Conditions Statement (Appendix 3 to Annex 1), Equipment Inventory (Appendix 4 to Annex 1), Elements Inventory (Appendix 5 to Annex 1), Excluded Equipment (Appendix 6 to Annex 1), Existing Works (Annex 4),</p>	



		<p>Existing Agreements (Annex 5) and Disrepairs to be Remedied (Annex 10). This is clearly not information that is appropriate to be included within the draft consultation documents, however. The information listed in these Annexes is subject to change (most notably the Conditions Statement and the Disrepairs to be Remedied), and therefore any information included within the consultation drafts would likely to out of date by the time of execution of any agreement.</p> <p><b>Amendments:</b> To clarify how the information will be inputted into the Annexes in due course, appropriate tables have been inserted into Appendices 3, 4 and 5 to Annex 1.</p>	
	1.3 Detailed delineation of station boundaries;	<p><b>Comments:</b> Plans of each Station have been provided in the Annexes published for consultation. These are sufficiently detailed for these purposes and clearly show the delineation of the Stations.</p>	Discussed with Sponsors – for security reasons these plans could not be supplied with a consultation document but be available separately - CLOSED
	1.4 Railways Systems Code (HAL promised on 19 May 2015 that this would form part of the Consultation);	Noted – to be provided	
	1.5 Emergency Access Code (HAL promised on 19 May 2015 that this would form part of the	Noted – to be provided	

Consultation);		
1.6 Performance Data Accuracy Code (HAL promised on 19 May 2015 that this would form part of the Consultation);	Noted – to be provided	Current PDAC provided
1.7 Detailed descriptions of assets, their values and rationale for assumed asset lives (including, for example, the reason for some assets have zero asset lives);	All information agreed to be provided by HAL as part of the pre-consultation engagement was provided.	No further response - CLOSED
1.8 Information on asset depreciation assumptions (for example in respect of in-year and in-period RAB additions, and historic additions);	All information agreed to be provided by HAL as part of the pre-consultation engagement was provided.	No further response - CLOSED
1.9 Information and rationale for inflation and indexation assumptions;	All information agreed to be provided by HAL as part of the pre-consultation engagement was provided.	No further response - CLOSED
1.10 Confirmation that values used to calculate the IRC are consistent with the aviation RAB as reported in HAL's 31/3/2015 regulatory accounts or a reconciliation of any differences;	All information agreed to be provided by HAL as part of the pre-consultation engagement was provided.	No further response - CLOSED
1.11 Rationale for the cost of capital used in the calculation of the IRC;	All information agreed to be provided by HAL as part of the pre-consultation engagement was provided.	No further response - CLOSED
1.12 Information on efficiency assumptions employed and/or a rationale for not applying efficiency assumptions;	All information agreed to be provided by HAL as part of the pre-consultation engagement was provided.	No further response - CLOSED
1.13 Detailed cost information by station;	All information agreed to be provided by HAL as part of the pre-consultation engagement was provided.	No further response - CLOSED
1.14 Models estimating 'costs directly incurred'	All information agreed to be provided by	No further response - CLOSED

	(short- and/or long-run marginal/incremental costs) in respect of all railway assets;	HAL as part of the pre-consultation engagement was provided.	
	1.15 Derivations for Schedule 4 and 8 parameters;	All information agreed to be provided by HAL as part of the pre-consultation engagement was provided.	No further response - CLOSED
	1.16 Details of projected operations and maintenance expenditure and how these are allocated to the 'opex', 'pass-through' and 'variable usage' categories and how the per path charges are generated;	All information agreed to be provided by HAL as part of the pre-consultation engagement was provided.	No further response - CLOSED
	1.17 Details of cash flows in respect of: HEx/Heathrow Connect rail revenue, HEx/Heathrow Connect rail opex, Rail asset funding – General rail infrastructure and HEx/Heathrow Connect specific assets; and Access charges levied on Rail Operators;	All information agreed to be provided by HAL as part of the pre-consultation engagement was provided.	No further response - CLOSED
	1.18 Details of cash flows through the aviation regulatory framework to generate a contribution to or subsidy requirement from aeronautical charges, for each of: today; September 2015 (or when regulatory framework in place); and May 2018 (or when a non-Heathrow operator starts services).	All information agreed to be provided by HAL as part of the pre-consultation engagement was provided.	No further response - CLOSED
	2 Information necessary to the effective operation of access contracts includes (but is not limited to: 2.1 Engineering Access Statement; 2.2 Timetable Planning Rules;	Repeated in other sections – noted for further review	TBD

	<p>2.3 Railway Operational Code;  2.4 Heathrow rail standards and rules;  2.5 HAL's maintenance and renewals plan;  2.6 Operational resilience plan;  2.7 Strategic Capacity Statement;  2.8 Sectional Appendix;  2.9 Asset Management Plan;  2.10 Business Plan (as required under the Rail Regulations 2015); and  2.11 Delay Attribution Guide (or equivalent).</p>		
<p><b>Basis of Documentation</b></p>	<p><b>57.4</b> "The HAL Station Access Agreement and HAL Station Access Conditions appear to be based on the ORR template Station Access Agreement (multiple stations) and the 2013 SACs, which were primarily designed for use at Network Rail stations leased to franchise operators for the 7 or so years of their franchise. Under that structure, responsibility for maintenance and repair is split between those two parties. The proposed HAL structure appears to more closely mirror the Network Rail independent stations model under which the property owner and station facility owner roles merge with, for example, that one party retaining full responsibility for asset condition and maintenance. As a consequence, the HAL Stations Documentation proceeds on a flawed premise and the carefully engineered rights, protections and balances which are a feature of the 2013 SACs have been lost in</p>	<p><b>Comments:</b>  TfL correctly notes that the HAL Station Access Agreement and associated Conditions are based on the ORR template Station Access Agreement (multiple stations) and associated Station Access Conditions. It is clear that in drafting the HAL Station Access Agreement this template has been appropriately amended and adapted in order to account for HAL's position as both property owner and station facility owner. The terms of the agreement therefore largely reflect those of the Network Rail independent stations model.</p> <p><b>Amendments:</b>  The following provisions have been amended in the HAL Station Access</p>	<p>Further station related discussions are continuing between HAL and Sponsors.</p>

	<p>translation. By way of example, see below at paragraph 59.2.”</p>	<p>Agreement and Conditions in order to satisfy TfL that all the appropriate rights, protections and balances are reflected in the HAL documentation:</p> <ul style="list-style-type: none"> <li>• Conditions D 5.1.1 and 5.1.2 (notably, these provisions have been amended to clarify that the SFO is responsible for the maintenance and repair of all station equipment etc, and to impose an obligation on the SFO to repair outstanding repairs listed in Annex 10);</li> <li>• Condition D5.2;</li> <li>• Part E;</li> <li>• Part K (to reflect conditions 65.1 and 66.2 of the independent stations template);</li> <li>• Condition M4.2;</li> <li>• Condition N1.23 (to reflect condition 66.1 of the independent stations template);</li> <li>• Condition N1 (to provide the relevant additional SFO obligations, as listed in the independent stations template);</li> <li>• Condition Q3.3 (time limits provision added to reflect the independent station access</li> </ul>	
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		agreement template).	
<b>Proposed Charging Arrangements</b>	<b>57.5</b> "HAL's proposal is for a single unitary charge under which station access costs are intended to be incorporated within the track access charge, with a nominal Common Charge being payable under the HAL Stations Documentation. TfL is unable to discern how the station component is calculated; how the charge correlates to the assets at the relevant facility; what level of maintenance and services it is buying and so on. The stations are separate facilities distinct both from each other and more fundamentally from the network and so subject to regulation in their own right. HAL is therefore required to comply with the general principles of charging in the 2005 Rail Regulations and provide certainty and transparency over the station charging arrangements. The lack of a clear and distinct charging structure for stations access impact upon a number of Conditions within the HAL Station Access Conditions (see paragraph 59 generally). As noted above, the HAL Stations Documentation has been predicated on template documentation, a fundamental principle of which is a specific station access charging regime. By borrowing so fundamentally from the 2013 SACs but without adopting a clear and transparent station access charge, TfL considers the HAL Stations Documentation is defective."	A full list of all rail costs (including those related to the stations) was provided as part of the pre-consultation engagement.	No further response - CLOSED
<b>Regulation</b>	<b>58.1</b> "It is also not clear from the HAL Stations	<b>HAL Licence:</b>	No further response - CLOSED

	<p>Documentation whether access to the stations will be regulated under the 1993 Act and whether HAL will be regulated by way of a station licence. The HAL Station Access Agreement suggests that HAL will be exempt from the requirement to hold a licence under the 1993 Act, presumably because the Exemption Order does not require it to have a station licence. However, the HAL Stations Documentation confusingly makes numerous references to the 1993 Act and the station facility owner's licence obligations (e.g. D1.1, I2.1.9 and N1.5). TfL therefore questions whether HAL will hold a station licence and, if it will not, where concepts which are typically found in a station licence will be included (such as compliance with railway group standards, claims allocation and handling, disability protection policy and arrangement and provision of information). These concepts are not currently addressed in the HAL Stations Documentation and HAL should explain how, in the absence of a licence, users will be provided with sufficient comfort that these areas will be addressed. TfL considers that they will need to be contractualised or otherwise addressed in the HAL Stations Documentation."</p>	<p><b>Comments:</b>  HAL can confirm that they are exempt from the requirement to hold a station licence under the terms of the Railways (Heathrow Express) (Exemptions) Order 1994 (the "<b>Exemptions Order</b>"). As HAL do not hold a stations licence, references to the licence within the template agreement were assumed to be void and inapplicable. Furthermore, many of these references are followed by qualifying wording such as "as the case may be" and therefore did not affect the functioning of the SAA and the SAC.</p> <p><b>Amendments:</b>  For clarity, however (and upon TfL's request), HAL has deleted the following reference to the station licence within the Station Access Agreement:</p> <ul style="list-style-type: none"> <li>• Condition D1.1;</li> <li>• Condition I2.1.9;</li> <li>• Condition N1.5.</li> </ul> <p><b>1993 Act:</b>  <b>Comments:</b>  Under the Exemptions Order, HAL is only exempt from certain provisions of the 1993 Act. Many references to the Act within the SAA and SAC therefore remain relevant.</p>	
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		<p>Although HAL acknowledges that there are some irrelevant references to the Act within the agreement, these were assumed to be void and not removed from the original documentation as they do not affect the functioning of the SAA or SAC.</p> <p>HAL would like to highlight that the Exemptions Order is a publically available document, and questions TfL's evident failure to refer to its provisions in preparing its consultation response.</p> <p><b>Amendments:</b> For clarity, however, HAL has deleted references to sections of the Act from which it is exempt. Namely:</p> <ul style="list-style-type: none"> <li>• Station Access Agreement recital D;</li> <li>• Condition I2.2; and</li> <li>• Condition P3.5</li> </ul>	
	<p><b>58.2.1</b> “The structure proposed by HAL is poorly defined in terms of the assets which form part of the charges to be levied on rail operators – and specifically which assets form part of the station and thus are the subject of the rights obligations set out within the HAL Stations Documentation – and specifically which assets form part of each station for the purposes of the station access charges. TfL acknowledges that stations plans</p>	<p><b>Comments:</b> HAL has provided sufficiently detailed plans within the HAL Station Access Conditions Annexes. It is unfortunate that TfL has not had sufficient time to reviews these.</p> <p>HAL has included information regarding the assets contained within the Stations in the revised consultation drafts of the SAC</p>	<p>No further response - CLOSED</p>



	<p>have been made available, but due to the limited consultation period it has not been possible to determine the sufficiency of the plans or validate their consistency with operational needs. TfL's own experience is that for large and complex stations involving support from or to other structures, a simple plan is inadequate. Nor has there been sufficient time to consider and comment on the adequacy of the common station service and amenities"</p>	<p>Annexes (namely the Equipment Inventory (Appendix 4 of Annex 1) and Elements Inventory (Appendix 5 of Annex 1)). As discussed in the response to paragraph 57.3 above, HAL did not include this information in the original drafts as the number and condition of the assets present at each Station cannot be finalised until the time of actual execution of the agreements.</p>	
<b>Locus</b>	<p><b>58.2.2</b> "TfL infers that the intention is for HAL to become infrastructure manager of the Heathrow Rail Infrastructure (including the stations) and undertake the equivalent role of station facility owner. However, there is no clarity over what legal rights or interest HAL has to act in this capacity as it is not clear who owns the Heathrow Rail Infrastructure – whether it is HAL as freeholder, or another legal entity within the Heathrow Airport company structure which in turn leases the stations to HAL. This distinction is fundamental for understanding, amongst other things, who has station stewardship responsibilities (see below at paragraph 59.2). As currently drafted, the proposed contractual arrangements would indicate that HAL's proprietary interests are granted to it by a superior party."</p>	<p><b>Comments:</b> As explained in the response to paragraph 57.1 above, HAL is the Freehold owner of all three Stations at Heathrow Airport and the Heathrow Rail Infrastructure. There is currently no Superior Estate Grant (as defined in the SAC). HAL sees no reason to delete the references to Superior Estate Grants and Superior Estate Owners within the SAC, as the associated conditions recognise that such a superior interest may not exist and clearly have no effect in these circumstances.</p>	No further response - CLOSED
<b>Role of Heathrow</b>	<p><b>58.2.3</b> "The HAL Station Access Agreement has been prepared on the basis that HAL will be the</p>	<p><b>Comments:</b> Please refer to comments in response to</p>	No further response - CLOSED

<p><b>Express</b></p>	<p>"station facility owner" and there is therefore an inference that HAL will be responsible for managing and operating the stations. TfL understands that, in practice, these responsibilities are currently undertaken by Heathrow Express (in an equivalent role to a station facility owner) and note the suggestion elsewhere in the Consultation documents that this arrangement will continue (it is assumed for reasons relating to obtaining the requisite safety authorisations under ROGS). It is therefore not clear which party will undertake day-to-day infrastructure manager responsibilities and operations at the stations, including granting access. Gaining access to the stations is a fundamental requirement for train operators and the level of ambiguity over who will grant access must be resolved."</p>	<p>paragraph 57.1 above.</p>	
<p><b>Future ownership</b></p>	<p><b>58.2.4</b> "TfL also questions what the position would be and its impact on charging if in future HAL transferred the ownership of the Heathrow Rail Infrastructure to a third party or if the decision was taken to close a station. Some form of protection will be required for existing and potential users of a particular station, as well as other interested parties (such as the Mayor of London)."</p>	<p>Noted – there are currently no plans for a change in ownership.</p>	<p>No further response - CLOSED</p>

<p><b>Safety</b></p>	<p><b>58.2.5</b> “It is not clear who has responsibility for safety at the stations. HAL has removed reference to the requirement for it to hold a safety authorisation as a condition precedent to the Station Access Agreement (although TfL notes that a contradictory reference to HAL holding a Safety Authorisation remains in the Station Facility Owner Events of Defaults). It is unclear whether this is because it is intended that Heathrow Express will hold the safety authorisation and be responsible for operating the station. It is a requirement under ROGS (from which HAL is not exempt under the Exemption Order) that a safety authorisation is obtained by any party that manages and undertakes safety responsibilities in respect of infrastructure (including stations) on the UK's railways – typically on UK rail infrastructure it will be the station facility owner that performs safety duties. The contractual arrangements need to provide clarity and certainty over which party will undertake safety obligations – whether that is HAL or Heathrow Express – and demonstrate that party has the relevant competence to undertake such duties. If Heathrow Express is intended to undertake safety obligations, TfL would question whether Heathrow Express should in fact be undertaking the role of "station facility owner”.”</p>	<p><b>Comments:</b> Please refer to comments in the response to paragraph 57.1 above. HEOC will be responsible for the day-to-day management of the Stations and will therefore hold the Safety Authorisation. Please note, however, that Clause 1.3 of the SAA acknowledges that “[w]here a party has sub-contracted its rights or obligations under this Agreement to any third party...references to that party in this Agreement shall...include references to any sub-contractor so appointed”. Therefore the reference to the loss of safety authorisation in Clause 5.2.3 is effective.</p>	<p>No further response - CLOSED</p>
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<p><b>Charges</b></p>	<p><b>59.1 <i>General:</i></b> It is neither clear nor transparent how HAL is proposing to charge for use of the stations. The proposed HAL contractual arrangements are structured in a manner that stations and track are treated as standalone facilities and therefore each facility necessarily should have its own separate charging structure which accurately reflects and relates to the facilities and services being provided. As currently drafted, however, HAL appears to lump all costs into the track access charge which means it is not possible to ascertain which charges will be levied and at what level. TfL considers there needs to be cost certainty and transparency and as a consequence of the way in which HAL has chosen to structure the HAL Stations Documentation (i.e. on the basis of the 2013 SACs under which a long term charge and Qualifying Expenditure is contemplated), TfL believes such cost certainty and transparency is most effectively achieved by using the 2013 SACs charging model of a Long Term Charge and Qualifying Expenditure, as to use an alternative model would result in other terms of the HAL Stations Documentation being unworkable.</p> <p><b><i>Combined Charge:</i></b> As noted above, TfL understands that HAL intends to incorporate charges for station access into the track access charge, but with access to stations being granted</p>	<p>There are no plans to charge for the use of the stations.</p>	<p>No further response - CLOSED</p>
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	<p>by a separate station access agreement in consideration for a nominal Common Charge. This approach does not appear to comply with the Rail Regulations 2005 which requires infrastructure charges to relate to the costs attributable to the services being provided. It is also inherently discriminatory and unfair: the levy of a single access charge to use any part of the Heathrow Rail Infrastructure does not account for the fact that Crossrail services will not be calling at terminal 5. While TfL notes that the concept of a "Common Charge" has been retained, it is effectively meaningless given the nominal value.</p> <p><b>Long Term Charge:</b> The absence of a specific long term charge for station access means that there is no transparency over the make-up of the costs being charged. As such, train operators have no certainty as regards what long term renewals works will be undertaken by HAL and to what standard since there is no specific charge relating to such works. As HAL will have responsibility for station stewardship (see below at paragraph 59.2), it would be appropriate for HAL to levy a long term charge (set for a period of 3 to 7 years and subject to periodic review) to enable it to recover the efficient maintenance, renewal and repair costs associated with the stations, and provide train operators with clarity and certainty over HAL's maintenance and renewals outputs.</p>		
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	<p>Without a long term charge, train operators are denied a suitable remedy for HAL failure to perform since there is no long term charge to abate.</p> <p><b>Qualifying Expenditure:</b> Similarly, TfL considers that without the concept of Qualifying Expenditure, train operators have no transparency of the level at which they are being charged for routine and foreseeable operational activities. Furthermore, TfL notes that HAL has indicated in the HAL Network Statement that station platform staff and related services will continue to be provided by Heathrow Express but it is unclear how train operators would procure and pay for these services without there being the concept of Qualifying Expenditure under the HAL Station Access Conditions.”</p>		
<p><b>Station Asset Stewardship</b></p>	<p><b>59.2</b> “The HAL Station Access Conditions do not make clear what HAL's obligations will be in relation to station asset stewardship and how HAL's performance relating to upkeep of the stations will be measured (this is linked to the payment of a Long Term Charge). The infrastructure manager's station stewardship obligations are typically detailed in its licences. In the absence of any HAL licence, TfL would expect to see HAL's station stewardship obligations (in terms of scope and standards of performance) being detailed in the contractual arrangements,</p>	<p>Noted.</p>	<p>HAL is considering what can be provided</p>

	<p>and it is unacceptable that the HAL Stations Documentation provides no clarity over how long-term maintenance, renewal and improvement of the stations will be secured. Train operators will require certainty that HAL, as infrastructure manager, will undertake station stewardship obligations in accordance with a specified performance regime, as well as clarity over how they will be charged for the delivery of these obligations. Furthermore, as noted above in paragraph 59.2, the proposed single unitary charge provides no transparency as to what proportion of the charge relates to station asset stewardship.”</p>		
<p><b>Maintenance and Repair</b></p>	<p><b>59.3</b> “Given HAL's intention to act as infrastructure manager and undertake a role equivalent to a station facility owner, it necessarily follows that HAL should be responsible for all aspects of repair and maintenance at the stations, including all costs associated with such repair and maintenance irrespective of the cause. Categorising the costs for activities set out in the HAL Station Annexes is crucial to understanding the charging for repair and maintenance of such activities and the split between long term charge and qualifying expenditure of those costs. Given its proposed structure, HAL will be responsible for performing both maintenance and repair but, as currently drafted, the HAL Stations Documentation lacks</p>	<p><b>Comments:</b> The services and amenities provided by HAL at the Stations are clearly outlined in Annex 1 of the SAC. Unfortunately it appears that TfL has failed to review these provisions.</p> <p><b>Amendments:</b> As mentioned above in HAL’s response to paragraph 57.4, conditions D 5.1.1 and 5.1.2 have been amended to clarify that HAL as SFO will be responsible for the maintenance and repair of all Station Infrastructure.</p>	<p>No further response - CLOSED</p>

	<p>clarity over what services train operators will receive from the station facility owner. Train operators will require certainty in the HAL Station Access Conditions that HAL will ensure the ongoing upkeep of the stations and over the standards to which those services will be performed.”</p>		
<p><b>Proposals for change</b></p>	<p><b>59.4</b> “TfL has not had the opportunity to consider fully the implications of the Change procedures set out in Parts B and C of the HAL Station Access Conditions due to the limited period for consultation but in any event remains to be convinced that the general mechanisms for proposing Changes under Parts B and C of the HAL Station Access Conditions are workable:</p> <p><b><i>Basis of Change:</i></b> The Change provisions in the HAL Station Access Conditions appear to be unworkable as it is unclear how the impact of the Changes will flow through the station access charges given they are subsumed in the track access charge. The effect is that changes may be proposed without it being understood how these will impact on the charges. There needs to be a process for promoting beneficial change however, the lack of clarity over charging results in a process that ultimately will block beneficial changes due to an inability to quantify the financial consequences or charge for them. TfL notes that it is clearly contemplated by HAL that</p>		<p>Further station related discussions are continuing between HAL and Sponsors</p>



	<p>there may be third party investment in the stations, but the basis upon which the Change procedure has predicated and the lack of clarity surrounding charges means that it will be extremely difficult to secure any such investment.</p> <p><b>Role of the ORR:</b> TfL would question what locus ORR has to approve proposals and hear appeals under the Change procedures given that, as TfL understands it, HAL will not be regulated by way of a network licence or station licence under the 1993 Act. TfL would like to understand from HAL whether it has received confirmation from ORR that it is willing to act in this capacity and what the terms of reference are.</p> <p><b>Requisite Majority:</b> The Requisite Majority is set at 51%, substantially lower than the industry norm (80%) and potentially gives one party a disproportionate influence, as one extra departure could effectively give a party control.”</p>	<p><b>Role of the ORR</b>  <b>Comments:</b> Under section 22 of the 1993 Act, amendments to Station Access Agreements are void unless approved by the ORR. In addition, under section 22A and Schedule 4A of the Act, the ORR can direct parties to amend access agreements. As HAL is not exempt from section 22, section 22A or Schedule 4A of the Act, Conditions B3, B5 and B6 of the HAL Station Access Conditions relating to the approval or rejection of a Conditions Change Proposal by the ORR must be retained.</p> <p><b>Requisite Majority:</b>  <b>Comments:</b>  <b>Noted – no change proposed.</b></p>	
<b>Remedies</b>	<p><b>59.5</b> “HAL has removed the self-help remedies and abatement regime available to train operators, the consequence being that train operators no longer have an adequate remedy for poor performance. This represents a fundamental departure from the industry norm which TfL considers HAL should explain and</p>	<p><b>Comments:</b>  The self-help and abatement regime has been removed from the SAA as the charging provisions are now contained within the Track Access Agreement. A regime providing remedies for poor performance has therefore also been</p>	<p>No further response - CLOSED</p>

	justify. The only remedies that remain available to train operators (namely the indemnity and contractual damages) will in most circumstances be unworkable for a claim for poor performance, with the consequence that train operators are provided with no effective remedy. The remedies available to train operators should be reflective of the services being received and designed in conjunction with appropriate charging arrangements.”	incorporated into the Track Access Agreement at Schedule 8. HAL believes that this provides a workable regime for claims for poor performance.	
<b>Inconsistencies</b>	<b>59.6</b> “There are several inconsistencies with the HAL Stations Documentation which include: 59.6.1 numerous references throughout the HAL SACs to Parts which are no longer used (e.g. Condition D2.1.2 refers to Park K; Condition D2.2.2 refers to Condition L2.3); and 59.6.2 references to sections of the 1993 Act, even though as TfL understands access to the stations will not be regulated under the 1993 Act and HAL will not be regulated by way of a station licence. (e.g. Conditions B6.2.2 and 6.2.3 of the HAL SACs).	<b>Comments:</b> References to conditions and parts no longer used are void and therefore have no effect on the functioning of the SAA. To clarify the position, however, all void references have now been deleted.  With respect to the references to sections of the 1993 Act, as explained above in response to paragraph 58.1, the Heathrow Exemption Order only exempts HAL from certain sections of the 1993 Act. Many of the references within the Station Access Conditions therefore remain relevant.	No further response - CLOSED
<b>Scotland, Welsh Government and PTEs</b>	<b>59.7</b> “There are references in the HAL Stations Documentation to the Scottish Ministers, Welsh Government and PTEs. The definition of "Network" under the HAL SACs also includes reference to Scotland. TfL does not consider	<b>Comments:</b> All references to the Scottish Ministers, Welsh Government and PTEs are followed by “as the case may be”, or “if any of them may be affected by”. Although HAL	No further response - CLOSED

	these references to be relevant in the context of the Heathrow Rail Infrastructure entirely located in England, and specifically the Greater London area. TfL thinks this could be as a result of using the 2013 SACs as the starting point.”	acknowledges that these references may be irrelevant in this context, the Conditions allow for this and provide that the references only have effect if relevant in the circumstances. In any case, and to avoid TfL’s further confusion about the functioning of this template agreement, these references have now been removed.	
<b>Typos and definitions</b>	<b>59.8</b> “HAL should undertake a general tidying up of the HAL Stations Documents prior to their introduction. For example, there are references to "the Network" rather than the “HAL Infrastructure”, and to "HAL" rather than "the Station Facility Owner".”	<b>Comments:</b> HAL does not understand TfL’s issue with the use of the term Network. This is a clearly defined workable definition and will be retained within the agreements.  <b>Amendments:</b> References to HAL within condition B5 have been deleted.	Network is defined in Heathrow SACs, HAL Infrastructure is not, and therefore Network will be used. The wording will be amended accordingly - CLOSED
<b>Insurance</b>	<b>59.8</b> “HAL has not provided for a minimum sum in respect of its insurance obligations. TfL considers the absence of a notion of a minimum sum means that any insurance procured is unlikely to be for an inefficient price.”	<b>Comments:</b> The absence of a specified minimum sum within HAL’s insurance obligations clearly does not preclude HAL obtaining insurance subject to an appropriate excess. HAL does not see the need to set the amount of this excess within the SAC.	Confirming with HAL insurers
<b>Station Facility Owner’s Obligations</b>	<b>59.10</b> “Given HAL's intention to be infrastructure manager of the stations, it is appropriate that certain of the additional positive obligations in Part N of the HAL SACs should be reinstated and delivered by HAL, including the requirement to	Noted – see ref above.	No further response - CLOSED

	<p>minimise the cost of operations. Although there is a fundamental lack of clarity over how train operators will be charged for stations access and what those charges will relate to, ultimately the train operator will be covering the costs of operating the stations and so HAL should be under a duty to procure services efficiently and perform the station facility owner's duties properly.”</p>		
<b>Access Dispute Resolution Rules</b>	<p><b>59.11</b> “The HAL SACs refer to the "Access Dispute Resolution Rules", being the rules annexed to the HAL Network Code. It is unclear but assumed that this is in fact a reference to the HAL ADRR and not the access disputes resolution rules for the national network. TfL comments in relation to this aspect of the HAL ADRR. It is unclear how HAL intends to implement its own Access Dispute Resolution Rules procedure and how it will be paid for and staffed generally.</p>	<p><b>Comments:</b> The Access Dispute Resolution Rules are defined within the HAL Station Access Conditions as “the rules regulating the resolution of disputes between parties to access agreements entitled “The Access Dispute Resolution Rules”, the current form of which is annexed to the Network Code”. The Network Code is subsequently defined as “The HAL Network Code as modified from time to time”.</p> <p>HAL does not understand how this definition is unclear and urges TfL to look to the relevant provisions in the HAL Network Code for information as to how the Access Dispute Resolution Rules procedure will operate.</p>	<p>No further response - CLOSED</p>
<b>Limit of Liability</b>	<p><b>59.12</b> “HAL has placed a limit on its liability under Relevant Agreements in Condition L7.5, which is inconsistent with the industry norm. It is not in a position to consider and comment on HAL's</p>	<p>Noted – see ref above.</p>	<p>HAL’s response adequately deals with TfL’s concerns. HAL’s liability cap in the first Contract Year under Schedule 9, paragraph 1(a)</p>

	proposed limit of liability without having clarity over the charging regime.”		has been amended to £155m, the industry norm - CLOSED
<b>Damage to the Stations</b>	<b>59.13</b> “HAL has introduced a new Condition D12, under which users are required to reimburse HAL for the full cost of complying with its obligations to undertake repair and maintenance works necessary to address damage caused to the stations by a user, its staff or passengers. Given its proposed structure TfL considers HAL should be responsible for all repair and maintenance and this new provision fundamentally undermines the intended structure.”	<b>Comment:</b> Under the SAA and SAC, HAL is responsible for the repair and maintenance of station infrastructure. Condition D12 is intended to ensure that Operators bear the cost of damage caused by them (or their passengers) <i>intentionally or recklessly</i> . HAL disagrees that this provision undermines the intended structure, as HAL’s general duty to maintain stations infrastructure and repair damage remains intact. In the absence of a charging mechanism whereby the costs of repair are directly passed on to Users, this additional provision merely provides an incentive for Operators not to intentionally or recklessly damage the Stations.	No further response - CLOSED
<b>ABUSE OF DOMINANT POSITION</b>			
<b>Introduction</b>	<b>60.2</b> “For all the reasons given in Part 4 of this response, TfL considers that in setting its FTAC, HAL is failing to comply with either of the exceptions to the general charging principle set out in paragraph 2 and 3 of schedule 3 of the Rail Regulations 2005. This will only lead to one outcome, the imposition by HAL of an excessively high FTAC on operators in breach of Chapter II,	HAL’s charges have been set in an open, transparent and non-discriminatory manner, applying equally to all infrastructure users. The charges were a key part of the industry consultation to which your comments relate and have been fully disclosed to the ORR.	No further comment - CLOSED

	<p>Competition Act 1998, which prohibits abuse of a dominant position.</p> <p><b>60.3</b> The proposed FTAC materially exceeds the cost that is directly incurred by HAL in providing the Heathrow Rail Infrastructure service, and indeed, bears no reasonable relation to the economic value of this service. Rather the charges are clearly set too high, unfair and will result in higher prices for passengers and rail companies; and discourage, if not prevent, the entry of new operators to enter the market. Nor do such charges conform to the principles of transparency and non-discrimination.</p> <p><b>60.4</b> Furthermore, it is clear that the Heathrow Rail Infrastructure is an "essential facility" under competition law - it is indispensable and objectively necessary for operators (especially those that have made relationship-specific investments) to compete effectively in the downstream markets for the supply of public passenger transport services on the various point-to-point routes. There is no viable alternative link to Heathrow Airport. Any suggestion that the London Underground Piccadilly Line could be or is an actual or potential substitute is clearly unfounded, especially given the incompatibility of the track/tunnelling and signalling specification as well as the</p>	<p>The level of charges has been determined in accordance with the applicable regulations.</p> <p>The Heathrow Spur is clearly not an "essential facility" under competition law as there are other methods of surface access to the airport (including alternative rail access) and in any event there is no refusal to supply access to the Spur. Full access is being provided to TOCs in accordance with the applicable access regulations on equal terms.</p> <p>HAL does not accept that its rail access terms are inconsistent with competition law requirements.</p>	
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	<p>route/location of the underground line.</p> <p><b>60.5</b> HAL's proposed FTAC is so excessive that not only would it constitute excessive pricing, but it would also constitute a constructive refusal to supply access to an essential facility. HAL's FTAC will only lead to the elimination of effective competition and consumer harm on the downstream market.</p> <p><b>60.6</b> TfL considers that by virtue of its dominant position and the proposed FTAC, HAL would be in breach of the competition rules (i.e. specifically the prohibition on abuse of dominance)."</p>		
<b>Vertical integration and discrimination</b>	<p><b>61.2</b> It is not clear from HAL's proposals whether the FTAC will be 61.2 applied in a non-discriminatory manner (i.e. whether it will apply to all train operating companies operating on the Heathrow Rail Infrastructure, including HEOC). Such vertical integration potentially gives rise to the risk of cross-subsidisation between HAL and HEOC. Such cross-subsidisation could allow HEOC to reduce its costs, allowing it to offer lower fares to passengers (whilst maintaining its margins) and thereby minimise the impact of the FTAC. This therefore gives HEOC a potential advantage over its non-vertically integrated competitors who would not benefit from such cross-subsidisation (i.e. MTR Crossrail, once it takes over from Heathrow</p>	<p>Full separation between the HAL infrastructure manager and the TOC has been achieved with the full guidance of the ORR and as such there are no cross subsidies.</p>	<p>Details of how the full separation achieved with full guidance of the ORR has been provided to Sponsors - CLOSED</p>

	<p>Connect (and TfL as a consequence)). These non-vertically integrated competitors would likely be obliged to pass the FTAC onto their passengers in the form of higher fares or more likely be forced to significantly reduce their margins in order to set competitive fares and continue to attract customers to their services. However, reduced profitability as a result of reduced margins would in turn only impact their ability to invest in innovation and ensure continued improved services for customers, hampering their ability to compete effectively in the marketplace.</p> <p><b>61.3</b> As a result, the FTAC has the potential to have a discriminatory effect in favour of HAL/HEOC, as third party operators will effectively be paying a higher (i.e. nonsubsidised) FTAC than HEOC.”</p>		
<b>Reduced on-rail competition</b>	<p><b>62.1</b> “As a wider point, TfL notes that effective on-rail competition results in benefits for passengers and the taxpayer. The CMA recently undertook a detailed policy project into the potential benefits of increased on-rail competition in its Competition in passenger rail services in Great Britain' consultation. The CMA's evidence indicated that greater on-rail competition would be likely to deliver, for passengers and</p>	Noted.	No further response - CLOSED



	<p>taxpayers, downward pressure on fares and upward pressure on service and innovation (e.g. greater incentives to enhance service quality and to innovate, operational efficiencies at the train operator level, more effective use of network capacity and cost savings in network operation).</p> <p><b>62.2</b> HAL's proposed FTAC could potentially impair TfL's ability to run the Crossrail services to stations on the Heathrow Rail Infrastructure as an effective competitor to HEOC for all the reasons outlined above, especially if TfL has to pass on the FTAC to passengers in the form of higher fares and/or has to operate a more limited service than planned to minimise its FTAC payments to HAL (i.e. because it is a fixed 'per movement' charge) or even not run a service at all. Furthermore, the proposed FTAC is likely to dissuade any new applicants from applying to HAL to operate an open access service to stations on the Heathrow Rail Infrastructure. Therefore, HAL's proposed FTAC is likely to reduce on-rail competition on routes to and from stations on the Heathrow Rail Infrastructure, thereby preventing the many benefits that greater on-rail competition could otherwise provide to passengers and taxpayers (as identified above).”</p>	<p>HAL access charges will apply equally to all users of the Heathrow Spur thus ensuring a level playing field for all competitors. There is no justification for air passengers subsidising rail passengers as you suggest as this would clearly distort competition between the operators of the various modes of surface access to the airport.</p>	
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