

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

TfL notes that unless otherwise specifically stated, the points raised in its initial consultation response have not been adequately addressed by HAL and therefore TfL remains aggrieved by the position adopted by HAL.

Content	TfL Comments	HAL initial response and associated amendments	HAL Response November 2015	TfL response January 2016
Introduction	1.5 "The deficiencies are fundamental, and encompass not only the procedure which HAL has adopted (which is both in breach of the Deed of Undertaking, and on any view allows insufficient time for a fair consultation), but more critically reveal a basic misapprehension by HAL as to its obligations and duties at law. The result is an incomplete set of documents which fail to get anywhere close to a satisfactory, or legally compliant, basis for provision of access to the Heathrow Rail Infrastructure; and a proposed charging regime which fails to grapple with complex regulatory, economic and legal issues."	N/A	N/A	TfL's comments have not yet been addressed by HAL and therefore remain.
	1.6 "TfL is committed to ensuring that these deficiencies are corrected: it has invited HAL to agree to extend the consultation process in order to work with HAL (along with other interested parties, specifically the DfT, MTR Crossrail, Network Rail, the Mayor, HEOC, the ORR and the CAA) to arrive at			

	a satisfactory and legally compliant proposal. HAL has rejected that offer."			
<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>A schedule was agreed with the DfT and the ORR and has been completed.</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed. It is not correct to say that the only reason it is bound by the Rail Regulations is due to the Deed of Undertaking. HAL cannot agree contractually whether or not to comply with law.</p> <p>In any event, on its understanding of the Deed of Undertaking, TfL does not believe that the schedule has been completed.</p> <p>Despite requests from Sponsors, HAL has refused to provide assurance either: (i) that the separation requirements have been implemented; or (ii) that the ORR is comfortable with HAL's structure.</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</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</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed.</p> <p>TfL considers that HAL has not satisfied the requirements of</p>

	<p>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 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.”</p>	<p>Airport Limited (HAL) Moving to a regulated railway consultation</p>		<p>the Deed of Undertaking for the reasons set out in its original consultation response.</p>
<p><b>The ORR/CAA Jurisdiction</b></p>	<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>ORR is the regulatory body with respect to rail matters</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed.</p> <p>HAL has not explained the interaction between the responsibilities of the CAA in setting charges for the airport and the responsibilities of the ORR in setting charges for rail infrastructure. In particular, whether the CAA’s decision could impact on the rate of return for the railway. In the context of stations discussions,</p>

				<p>HAL has referred to this rate of return and therefore there seems to be a possibility that a CAA determination will have an impact on rail charging.</p> <p>TfL remains of the view that HAL’s proposals are: (i) not clear; and (ii) could result in the CAA exercising (albeit indirectly) jurisdiction in relation to rail charges.</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>			<p>Please see the row above. TfL remains of the view that all of the Heathrow railway assets should fall outside of the CAA’s jurisdiction in relation to charging.</p>
<p><b>The Investment Recovery Charge</b></p>	<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>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</p>	<p>No further response – CLOSED</p>	<p>TfL does not consider this to be closed.</p> <p>TfL notes the outcome of the ORR’s charging framework decision will be determinative on this point. TfL remains of the view that the proposed</p>

		determination.		Investment Recovery Charge does not meet the requirements of the Rail Regulations, so that it cannot be charged.
	<b>4.2</b> "In order to recover its investment costs as part of the charges to users of the infrastructure 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."	Heathrow has submitted a further paper explaining its position to the ORR.	No further response – CLOSED	TfL does not consider this to be closed for the reasons set out in its consultation response.  TfL has not seen this paper and remains of the view that the "two limb" test set out in the Rail Regulations cannot be satisfied.
	<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."		No further comment – CLOSED	TfL does not consider this to be closed for the reasons set out in its consultation response.
	<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	HAL strongly objects to any reliance on two 'without prejudice' letters in 2006. Those letters were generated in the course of negotiations between	No further response - CLOSED	TfL does not consider this to be closed for the reasons set out in its consultation response.

	<p>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 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><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</p>	<p>Repeated elsewhere in the document</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed. No effort has been made by HAL to explain the rationale for its proposed charging regime and why it does not take into account the various points mentioned.</p> <p>TfL remains concerned of the possibility of “cross subsidy”</p>

	<p>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>from rail operators to airlines and the fact that track and station charging has not been separated.</p> <p>TfL is also extremely concerned about HAL seeming to have the unfettered right to amend the access charges.</p> <p>TfL notes that some or all of these points may be determined by the outcome of the ORR’s decision on the charging framework.</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</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>	<p>TfL does not consider this to be closed.</p> <p>Whilst TfL acknowledges HAL's intention to resolve its concerns, TfL has not been provided with any indication of where HAL proposes to amend the documentation to address the overt discrimination. Before confirming that this item is closed, TfL would need to consider HAL’s proposals and whether they cover every area of potential discrimination in the</p>

	infrastructure manager within the context of the Rail Regulations 2005, or the complexity and sophistication of the documentation required to set out those obligations and duties.”			access documentation.  TfL notes further that it does not consider Interfleet to be an “independent” expert as they have been engaged by HAL to perform the tasks as instructed by HAL.
<b>INADEQUACY OF CONSULTATION</b>				
<b>Introduction</b>	<p><b>8.1</b> "The Consultation being conducted by HAL is inadequate. In particular:</p> <p>8.1.1 HAL has not:</p> <p>(a) provided sufficient essential supporting information or evidence for its proposals; or</p> <p>(b) established any process for raising clarification questions as part of the Consultation process;</p> <p>8.1.2 There is no timetable, process or mechanism for requesting further information or clarification as part of the Consultation;</p> <p>8.1.3 HAL did not agree to a request from TfL to extend the period of the Consultation to allow all consultees to properly, fully and carefully consider the complex issues raised in the Consultation and the volume of documentation proposed by HAL in connection with the</p>			TfL's comments have not yet been addressed by HAL and therefore remain.



	Consultation."			
Basis of HAL's Consultation	9.1 "HAL's letter dated 1 July 2015 (which was not sent to TfL) purports to set out the basis on which HAL is consulting and what the outcome of the Consultation should be. The Letter reveals a basic lack of understanding of the meaning, requirements and effect of the Rail Regulations 2005, and the application of those regulations to HAL (for the reasons set out in paragraph 4)."			TfL's comments have not yet been addressed by HAL and therefore remain.
	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:	HAL has completed its consultation and complied with its obligation. In addition, supporting detail was provided during 2015 to TfL.  Should TfL have further, specific questions to raise, HAL will, of course, provide further consideration.	A plan of actions HAL is currently working through has been issued and is being actively managed with Sponsors - CLOSED	TfL does not consider this to be closed. Whilst some information was provided by HAL, not all of the information requested by TfL to allow it to consider HAL's proposals was provided. The proposals therefore remain unclear and the concerns set out in TfL's consultation response remain.
	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			TfL does not consider this to be closed.  At no point has HAL set out any rationale for its approach or any consultation paper in connection therewith. TfL considers this to be a fundamental flaw in the

	<p>consultees and would usually give helpful background and understanding on the basis of and reasons for the Consultation.</p>			<p>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>TfL remains concerned at the flaws in the consultation process which HAL undertook, albeit that the process is now closed and this is unlikely to have an impact on the documentation.</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 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>TfL remains concerned at the flaws in the consultation process which HAL undertook, albeit that the process is now closed and this is unlikely to have an impact on the documentation.</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>TfL does not consider this to be closed. Whilst some information was provided by HAL, not all of</p>

				<p>the information requested by TfL to allow it to consider HAL's proposals was provided. Fundamental information remains missing.</p> <p>TfL remains concerned at the flaws in the consultation process which HAL undertook.</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>			
<b>Advent of Crossrail</b>	<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>HAL is bound by the Deed of Undertaking and understands its legal obligations.</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed.</p> <p>HAL does not appear to have understood TfL's comment. HAL is bound by the Rail Regulations and cannot contract in or out of complying with those regulations.</p> <p>It is the existence of the Rail Regulations which imposes certain obligations on HAL as the infrastructure manager of the Heathrow Rail Infrastructure.</p>

				It is not because Crossrail services currently plan to use the Heathrow Rail Infrastructure which results in it becoming regulated.
	<p><b>10.2</b> "Further, TfL considers that HAL has been 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>	2.1 refers		TfL does not consider this to be closed and remains disappointed that HAL was not more organised to put arrangements in place sooner, rather than rushing through a consultation at the last minute. Please see our comments in the row above.
<b>The Deed of Undertaking</b>	<p><b>11.1</b> "The Letter also asserts that "under the 30 May 2008 Crossrail Deed of Undertaking between HAL and the Secretary of State for Transport, HAL undertook to be regulated". This is also incorrect. HAL cannot, as a matter of contract or otherwise, agree whether or not to be bound by law."</p>			TfL's comments have not yet been addressed by HAL and therefore remain.
<b>Obligations under the Rail Regulations 2005</b>	<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</p>		Further advice has been sought through HAL independent experts as well as further engagement with rail industry through	TfL does not consider this to be closed. It will only be closed once satisfactory documents have been published.

	<p>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>workshops. The regulation documents will be updated, where appropriate, as soon as HAL completes the current review - CLOSED</p>	<p>TfL notes it is engaging with HAL in relation to the access documents and will look forward to receiving revised drafts to consider and comment on before they are finally published.</p> <p>TfL notes further that it does not consider Interfleet to be an “independent” expert as they have been engaged by HAL to perform the tasks as instructed by HAL.</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 particular);</p>	<p>Repeated elsewhere in the document</p>		<p>TfL does not consider this to be closed. More information is required in the HAL Network Statement in relation to this –</p>

				please see TfL’s consultation response comments.
	(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);	Demonstrated to the satisfaction of the ORR		TfL does not consider this to be closed.  HAL has refused to provide information reasonably requested by Sponsors in relation to the composition of its boards to allow Sponsors to consider whether the separation requirements have been met. HAL has also refused to provide confirmation from the ORR that it is happy with the proposed structure of the wider Heathrow group.
	(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;	Submitted to ORR, subject to determination		TfL does not consider this to be closed. As noted above, despite a number of requests from TfL to understand the breakdown of how the proposed charges have been calculated, no information has been provided.
	(d) setting up a performance scheme as required by regulation 14 of the Rail Regulations 2005; and	Included in current TAC’s		TfL notes that a performance regime is the subject of discussion between HAL and Sponsors and TfL has fed its comments back to HAL in connection with its latest

	<p>(e) establishing rules for the allocation of capacity as required by regulation 16 of the Rail Regulations 2005. These requirements go far beyond issuing the HAL Network Statement and the HAL Network Code; and</p>	<p>As described in HAL Network Statement – review further</p>		<p>proposal.</p> <p>TfL does not consider this to be closed.</p> <p>TfL notes that this is something which HAL is reviewing further and looks forward to considering HAL’s proposals.</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 establishment of the charging, regulatory and contractual framework (which are interdependent) for the Heathrow Rail Infrastructure.”</p>			<p>TfL notes that HAL has provided certain documents which will be incorporated into the access documentation.</p> <p>Where the documents are Network Rail-issued documents, HAL should confirm: (i) how those documents will be adopted by HAL; and (ii) what adaptations will be made by HAL to those documents to make them fit for purpose for the Heathrow Rail Infrastructure. TfL looks forward to considering HAL’s proposals.</p>
<p><b>Extension of time</b></p>	<p><b>13.1</b> "As HAL will be aware, on 6 July, TfL wrote to HAL (copying the DfT and ORR) to request an extension of time for TfL to respond to the Consultation. TfL asked for a fair and reasonable opportunity to consider the 9 documents (including the 3 station annexes) and over 600 pages</p>			<p>TfL notes the comments in 13.3 below.</p>

	<p>published by HAL and prepare a fully considered response on all relevant issues."</p>			
	<p><b>13.2</b> "Further, in the same letter TfL requested that HAL prepares a timetable for the consultation so that TfL (and other consultees) could have transparency over the process that would be followed."</p>			<p>TfL notes that HAL did not – and has not – published a timetable for the consultation, albeit that a revised work plan has been received.</p>
	<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>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>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>TfL does not consider this to be closed.</p> <p>This concern still remains as it reflects the inadequacy of HAL's approach to the consultation, including timeliness of responding to substantial concerns relating to the process.</p> <p>TfL notes further that it does not consider Interfleet to be an "independent" expert as they have been engaged by HAL to perform the tasks as instructed by HAL.</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</p>	<p>HAL asserts again that much financial information was provided as well as drafts of the Network</p>		<p>TfL does not consider this to be closed. It will only be closed once satisfactory documents have been published.</p>



	<p>been provided, either as part of the pre-consultation engagement or as part of the Consultation itself;          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 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:          (a) HAL has proposed certain unsuitable changes to the Network Rail contract documents; and          (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>Statement and Network Code prior to the consultation. We would remind TfL that no such exchange regarding the Crossrail proposition was forthcoming</p>	<p>TfL notes it is engaging with HAL in relation to the access documents and will look forward to receiving revised drafts to consider and comment on before they are finally published. These should properly reflect the relevant parts of the Network Rail documentation, together with further amendments to reflect the particular circumstances of the Heathrow Rail Infrastructure.</p> <p>TfL notes that certain key information requested both prior to and as part of the consultation has still not been provided by HAL.</p> <p>The provision of information relating to what TfL proposes to do in relation to Crossrail, its services and the Crossrail concession is irrelevant to the establishment of a non-discriminatory regime for the Heathrow Rail Infrastructure which will apply regardless of</p>
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	<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>As and when required, HAL will issue further consultation proposals to the industry and TfL will be invited to participate</p>		<p>the train operator in question.</p> <p>TfL notes that it will be invited to respond to all future consultations issued by HAL. TfL also notes the ongoing discussions with HAL in relation to certain aspects of the draft access documentation.</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>TfL’s comments remain. There are many aspects of HAL’s proposals which TfL remains aggrieved by.</p>
<b>JURISDICTION</b>				
<b>TfL’s understanding of the proposed arrangements</b>	<p><b>14.1</b> "HAL’s proposals fail to address which of the regulatory bodies is to have jurisdiction over the charges for access to the Heathrow Rail Infrastructure, and on what basis that jurisdiction is to be exercised. So far as TfL is able to understand the proposals, it appears that it is intended that the CAA will exercise regulatory functions in relation</p>			<p>TfL's comments remain.</p>

	<p>to an area (charging for rail access) in which it has no statutory jurisdiction, or experience."</p>			
	<p><b>14.2</b> "The HAL Network Statement is the only document in which the proposed charging regime for the use of the Heathrow Rail Infrastructure is set out. These references (in Part 6 of the HAL Network Statement) simply state the intention to levy a FTAC (in fact, an investment recovery charge) and the amounts of those charges. There is no further explanation, still less justification, of those charges, whether by reference to the charging principles in the Rail Regulations 2005 or at all."</p>			<p>TfL's comments remain.</p>
	<p><b>14.3</b> "Based on the pre-consultation engagement between TfL and the DfT (in their capacity of sponsors of the Crossrail project) and HAL, TfL infers HAL's proposal to be as follows:</p>			<p>TfL's comments remain.</p>
	<p>14.3.1 all of the Heathrow Rail Infrastructure would remain on the Airport RAB with the FTAC (or investment recovery charge) being calculated in accordance with the CAA's determination of charges under the airport "periodic review" process;</p>			
	<p>14.3.2 the operations expenditure associated with the Heathrow Rail</p>			

	<p>Infrastructure would also form part of the overall revenue requirement determined by the CAA as part of the airport "periodic review" process; and</p> <p>14.3.3 both the remuneration of capital investment and recovery of ongoing operating costs would be established by the CAA in the course of regulating HAL's aviation business. This would be a continuation of the arrangements which have been in place at least since the start of HAL's third regulatory control period or quinquennium in 1997. Throughout the intervening 18 years, all costs relating to this infrastructure have been recovered from airport users (net of income from rail operations) through the aviation charges levied on airlines (and TfL understands that HAL has granted security over the Heathrow Rail Infrastructure)."</p>			
	<p><b>14.4</b> "The Documentation therefore suggests HAL has not given proper thought to these "jurisdictional" matters in the formulation of its proposals. No such consideration was indicated during the pre-consultation engagement, and the CAA has confirmed that no discussions took place between it and HAL on these matters. Indeed, in most</p>			<p>TfL's comments remain.</p>

	other respects the arrangements proposed by HAL (to the extent that it is possible to understand them) are consistent with a charging framework under the Rail Regulations 2005 which is limited to the recovery of direct costs only (and no investment recovery charge)."			
<b>Meeting with CAA and ORR</b>	<b>15.1</b> "TfL (together with the DfT, as joint sponsors of the Crossrail project) held a joint meeting 27 May 2015 with the CAA and ORR representatives . At this meeting the CAA confirmed:			
	15.1.1 that it did not have any duty in relation to rail operators or users; and			
	15.1.2 it did not carry out any specific independent assessment or verification analysis of HAL's rail related revenue requirement."			
	<b>15.2</b> "The CAA does not have any rail industry expertise. It treats rail assets no differently to any other airport infrastructure, such as baggage handling systems. In contrast, ORR is ideally placed, with the relevant expertise, experience and knowledge of how a railway is and should be regulated, to establish the charging framework. Indeed, it is the duty of ORR (and not the			TfL's comments remain and it is acknowledged that the ORR will establish the charging framework for the Heathrow Rail Infrastructure.

	CAA) under the Rail Regulations 2005 to establish the charging framework. It is ORR which has regulatory powers in respect of railways under the 1993 Act and the Rail Regulations. The CAA has no jurisdiction in this area."			
<b>Access Charges Jurisdiction – the risk of double recovery</b>	<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."	HAL arrangements have been concluded and there are no plans to amend the principles, subject to ORR determination	No further response - CLOSED	TfL does not consider this to be closed. Whilst noting that the ORR has still not determined the charging framework for use of the Heathrow Rail Infrastructure, TfL's concerns regarding the relationship between rail charges and aviation charges remains.
	<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			TfL's comments remain.

	<p>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” shall be set at “the cost that is 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</p>			<p>TfL’s position remains that the charges for the use of the Heathrow Rail Infrastructure should be the costs directly incurred as a result of operating the train service. The costs in relation to the Heathrow Rail Infrastructure – both track and stations - should therefore not form any part of the CAA’s review. Funding of the wider Heathrow airport should not be from rail access charges.</p>

	the operation of its service.			
	<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 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>Noted. Reduction in contribution was directed by the CAA.</p>		<p>TfL notes therefore that HAL has already been compensated for the anticipated revenue impact on HEOC services resulting from the introduction of the Crossrail services – and acknowledges that HAL has agreed with this. Such impact should therefore not factor at all into the track access charges for use of the Heathrow Rail Infrastructure.</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.</p>	<p>No surplus can occur under the regulatory arrangements that HAL are subject to</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed. It is noted that the ORR is in the process of establishing the charging framework for use of the Heathrow Rail</p>



	<p>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>Infrastructure.</p> <p>TfL would like to understand how “no surplus can occur under the regulatory arrangements that HAL are subject to”. HAL has asserted elsewhere that this will not have an impact on landing charges – so it is not clear where the excess money will go.</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 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</p>	<p>ORR is the regulatory body with respect to rail matters</p>		<p>TfL’s comments remain – and TfL notes that the ORR is in the process of establishing the charging framework for use of the Heathrow Rail Infrastructure.</p>

	<p>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>		<p>Please see comments in row above.</p>
	<p><b>17.4</b> “This would need to be underpinned by an independent audit to ensure:</p>	<p>ORR will determine the audit schedule in line with their regulatory</p>		<p>TfL notes that HAL appears to have misunderstood its comments. These related not to</p>

	<p>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.</p> <p>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>obligations</p>		<p>the ORR’s ongoing audits but to an initial audit to ensure that assets were not captured by both the Airport RAB and the Rail RAB (and the associated values by which Airport RAB assets moved to the Rail RAB).</p> <p>HAL still needs to provide Sponsors with the policies referred to in this comment.</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>HAL remains in disagreement</p>		<p>TfL’s position remains that an investment recovery charge is not permissible under the Rail Regulations. TfL notes that this is something which the ORR is considering as part of its establishment of the charging framework for the Heathrow Rail Infrastructure.</p>
<p><b>Access charges jurisdiction – regulatory</b></p>	<p><b>18.1</b> "TfL acknowledges that sector regulators work closely together to establish best practice in regulatory</p>			<p>TfL's comments remain.</p>

<p>policies</p>	<p>policy making and to learn from experience. However, this falls some way short of a statutory basis for CAA to impose its policies on another sector regulator, simply for the administrative convenience of a monopoly infrastructure manager (HAL). This is particularly so where such policy could cut across equivalent policy established across the rail industry by the appropriate regulator for that sector (ORR)."</p>			
	<p><b>18.2</b> "An investment recovery charge calculation can be calculated in many different ways, one of which is the regulatory "building blocks" method which appears to be contemplating. This is typically based upon several factors, including:</p> <p>18.2.1 allowable (efficient) costs of the assets;</p> <p>18.2.2 when investment is logged to the regulatory asset base;</p> <p>18.2.3 amortisation duration and profile;</p> <p>18.2.4 regulatory rate of return; and</p> <p>18.2.5 approach to indexation/inflation. Both CAA and ORR will have their own separate policies in relation to each of these factors, such policies having been</p>			<p>TfL's comments remain on the CAA/ORR policies on each of the listed factors, although it is acknowledged that this remains subject to the ORR's determination.</p>

	<p>established through due process, in consultation with its stakeholders and consistent with the duties and objectives applicable to that regulator. For example, there is no reason why an airport business should have the same risk profile, investment trajectory or funding structure as a rail business (and even if there was initial congruence, divergence over time would be inevitable). This will be reflected in the rate of return allowed by the regulator."</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 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>3.1 refers</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed. TfL considers that there is a real risk that the interplay between the two regulatory regimes could be taken advantage of.</p>
<p><b>Jurisdiction –</b></p>	<p><b>Assets</b></p>	<p>3.1 refers</p>	<p>No further response -</p>	<p>TfL does not consider this to be</p>

<p><b>practical arrangements</b></p>	<p><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.</p>		<p>CLOSED</p>	<p>closed. The comments set out in TfL’s consultation response remain – particularly the need for a ring-fenced rail infrastructure and to avoid double counting.</p>
	<p><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 jurisdiction of the CAA. A clear delineation will in any event be required both under ROGS and the relevant access contracts.”</p>	<p>Evidence has been submitted to the ORR to cover all aspects of the HAL access charges and is subject to ORR determination</p>		<p>TfL notes that HAL appears to have misunderstood its comments. TfL’s comments relate to there being one regulator (the ORR) for all rail infrastructure, with the CAA having no input whatsoever into the financing of the Heathrow Rail Infrastructure. Of course, the CAA would retain responsibility for the airport</p>

				generally (excluding any assets relating to the Heathrow Rail Infrastructure).
	<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>	3.1 refers		TfL’s comments remain. Please also see TfL comments in the row above in connection with this.
	<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</p>	3.1 refers		<p>TfL notes that Sponsors are preparing a list of clauses which are required in the access documentation which are not covered by Network Rail documents due to Network Rail having a licence.</p> <p>TfL requires assurance that only the ORR will have responsibility for all charging relating to use of the Heathrow Rail Infrastructure.</p>

	<p>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 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.</p>			<p>TfL acknowledges that work is being undertaken to develop “change” regimes to be included in the HAL Network Code and HAL Station Access Conditions.</p> <p>However, the interface with charging remains severed. A change may well have an impact on charging and therefore charging needs to not be aggregated across track and stations.</p> <p>If any aspect of the charges is being determined by the CAA for the Heathrow Rail Infrastructure, TfL’s concerns remain that this could fetter the ORR in determining an appeal.</p>



	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.”			
<b>FIXED TRACK ACCESS CHARGE</b>				
<b>Introduction</b>	<p><b>20.1</b> "In Part 6 of the HAL Network Statement, HAL indicates its intention to levy a FTAC. In a confusing contrast to the position on the Network Rail network, this is not intended as a method of recovering those costs of operating the network which are fixed, regardless of how many trains operate across it. Instead, HAL notes that this FTAC is “to allow HAL to recover historic investment on rail infrastructure, in accordance with paragraph 3 of schedule 3 of the Rail Regulations 2005”."</p> <p><b>20.2</b> "HAL's proposed FTAC/investment recovery charge does not meet the requirements of the Rail Regulations 2005 for the imposition of such a charge and is unfair, inconsistent and potentially discriminatory for the reasons set out</p>			<p>TfL's comments remain, although it is acknowledged that it is subject to the ORR's determination.</p> <p>TfL's comments remain, although it is acknowledged that it is subject to the ORR's determination.</p>

	below."			
<b>Schedule 3 of the Rail Regulations</b>	21.2 "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.	HAL asserts again that much information was provided prior to the consultation including the approach rationale	No further response - CLOSED	TfL does not consider this to be closed. Whilst a limited amount of information was provided by HAL as part of pre-consultation engagement, it was not sufficient – and no separate explanation has been provided in relation to its proposals.
	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:	4.1, 4.2 refers		
	21.3.1 The imposition of an investment recovery charge operates as an exception to general charging principles;			TfL's comments remain.
	21.3.2 The burden is on the			TfL's comments remain.

	infrastructure manager seeking to impose such charges to justify them;			
	21.3.3 <i>Both</i> limbs of the test in schedule 3 must be satisfied before such charges can be imposed;			TfL's comments remain.
	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			TfL's comments remain.
	21.3.5 TfL regards HAL's prospects of establishing that <i>but for</i> the prospect of levying higher access 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."			TfL's comments remain.
<b>The project must increase cost efficiency or cost-effectiveness</b>	<b>22.1.2</b> "There are a number of points to be made about this. (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	4.1 refers	No further response - CLOSED	TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is considering the proposed imposition of an Investment Recovery Charge as part of

	<p>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>establishing the charging framework for the Heathrow Rail Infrastructure.</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>TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is considering the proposed imposition of an Investment Recovery Charge as part of establishing the charging framework for the Heathrow Rail Infrastructure.</p>
	<p>(c) The second reason identified by HAL (“<i>this in turn influences whether a project proceeds</i>”) 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</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>		<p>TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is considering the proposed imposition of an Investment Recovery Charge as part of establishing the charging framework for the Heathrow Rail Infrastructure.</p>

	<p>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></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 whose perspective it should be assessed; what the "project" actually</p>			<p>TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is considering the proposed imposition of an Investment Recovery Charge as part of establishing the charging framework for the Heathrow Rail Infrastructure.</p>

	is; and how the project performs against the criterion.			
	<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>TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is considering the proposed imposition of an Investment Recovery Charge as part of establishing the charging framework for the Heathrow Rail Infrastructure.</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 sub-paragraph (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</p>	<p>4.1, 4.2 refers</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is considering the proposed imposition of an Investment Recovery Charge as part of establishing the charging framework for the Heathrow Rail Infrastructure.</p>

	<p>project, without which the project <i>could not</i> go ahead.</p> <p>(b) There is no explanation as to what funding arrangements were available, or used, and the 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>			
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	<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 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>TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is considering the proposed imposition of an Investment Recovery Charge as part of establishing the charging framework for the Heathrow Rail Infrastructure.</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</p>			<p>TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is considering the proposed imposition of an Investment Recovery Charge as part of</p>



	<p>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>establishing the charging framework for the Heathrow Rail Infrastructure.</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 service being introduced six and a half years after the commissioning of the Heathrow Rail Infrastructure).</p>			<p>TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is considering the proposed imposition of an Investment Recovery Charge as part of establishing the charging framework for the Heathrow Rail Infrastructure.</p>
	<p><b>25.5</b> As stated above, PricewaterhouseCoopers LLP has carried</p>			<p>TfL does not consider this to be closed and its comments</p>

	<p>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>remain. TfL notes that the ORR is considering the proposed imposition of an Investment Recovery Charge as part of establishing the charging framework for the Heathrow Rail Infrastructure.</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>TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is considering the proposed imposition of an Investment Recovery Charge as part of establishing the charging framework for the Heathrow Rail Infrastructure.</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</p>			<p>TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is considering the proposed imposition of an Investment</p>

	any event; 25.7.2 without higher track or station access charges ever being envisaged; and 25.7.3 with multiple assurances from a senior representative of BAA being given to TfL of this fact.			Recovery Charge as part of establishing the charging framework for the Heathrow Rail Infrastructure.
	<b>25.8</b> This means HAL is not entitled to levy the FTAC under the Rail Regulations 2005.”			TfL remains of the view that HAL is not entitled to levy the FTAC under the Rail Regulations.
<b>TfL’s Position</b>	<b>25.1</b> "HAL claims that there must have been an expectation of higher charges being levied in order to justify the investment in the Heathrow Rail Infrastructure. TfL disagrees. The cost of construction of the Heathrow Rail Infrastructure was funded by BAA plc through its own capital and debt funding – and was included in the capital programme for the airport. These costs have been taken into account by the CAA, as part of the airport’s overall expenditure, in determining the landing charges payable by the airlines and also include a rate of return"			TfL's comments remain, although it is noted that this remains subject to the ORR's determination.
	<b>25.2</b> "In effect, this means the airlines have been paying for the construction cost of the Heathrow Rail Infrastructure not covered from the operating surplus of HEOC. This makes sense in the context			TfL's comments remain.

	<p>of a regulated airport where airlines have an interest in ensuring that passengers can get to the airport to use their services and are the ultimate beneficiaries of the Heathrow Rail Infrastructure. The airlines pay for a tangible asset which they ultimately stand to benefit from. It was in the context of airlines (as the beneficiaries) paying for the infrastructure investment that the funding decision was made – it was not envisaged that users of the Heathrow Rail Infrastructure would be required to fund the long term investment (such users only being envisaged at the time to be BAA subsidiary companies)."</p>			
<p><b>HAL cannot satisfy exception</b></p>	<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>4.1 &amp; 4.2 refers</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain.</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</p>	<p>TfL does not consider this to be closed and its comments remain.</p>			

	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> ".			
<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	TfL does not consider this to be closed and its comments remain.
<b>Determination by the ORR – duties under Section 4 of the Railways Act 1993</b>	<b>28.1</b> "HAL will be aware that ORR is required to exercise its functions in making any determination or deciding an appeal or otherwise under the Rail Regulations 2005 in a manner which it considers is best calculated to achieve the general duties described set out in the 1993 Act."			No response has been provided by HAL. It is acknowledged that the ORR's duties are a matter for the ORR and not for HAL. TfL's comments remain.
	<b>28.2</b> "TfL will in due course be submitting to the ORR that it should have particular regard to the following duties set out in Section 4 of the 1993 Act when considering HAL's proposed charging regime (and HAL Network Statement and HAL Network Code), each of which militate against the imposition of higher charges in respect of the long term costs of the project:			

	28.2.1 to promote improvements in railway service performance (section 4(1)(zb));			
	28.2.2 otherwise to protect the users of railway services (section 4(1)(a));			
	28.2.3 to promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that it considers economically practicable (section 4(1)(b));			
	28.2.4 to contribute to the development of an integrated system of transport of passengers and goods (section 4(1)(ba));			
	28.2.5 to contribute to the achievement of sustainable development (section 4(1)(bb));			
	28.2.6 to promote efficiency and economy on the part of persons providing railway services; (section 4(1)(c));			
	28.2.7 to promote competition in the provision of railway services for the benefit of users of railway services (section 4(1)(d));			
	28.2.8 to promote measures designed to facilitate the making by passengers of journeys which involve use of the			

	<p>services of more than one passenger service operator (section 4(1)(e));</p>			
	<p>28.2.9 to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance (section 4(1)(g));</p>			
	<p>28.2.10 to exercise its functions in a manner which is best calculated to protect the interests of persons providing services for the carriage of passengers or goods by railway in their use of any railway facilities which are for the time being vested in a private sector operator, in respect of the quality of and prices charged for such services (section 4(2)(b));</p>			
	<p>28.2.11 in exercising the functions assigned or transferred to it, to have regard to any general guidance given to it by the Secretary of State about railway services or other matters relating to railways and to have regard to the funds available to the Secretary of State for the purposes of his functions in relation to railways and railway services (sections 4(5)(a) and (c));</p>			
	<p>28.2.12 in exercising the functions assigned or transferred to it, to have regard to the ability of the Mayor of London and Transport for London to</p>			

	<p>carry out the functions conferred or imposed on them by or under any enactment (section 4(5)(d)); and</p> <p>28.2.13 in performing its duties, to have regard, in particular, to the interests, in securing value for money, of users and potential users of railway services and providers of railway services, of the persons who make available the resources and other funds mentioned in that subsection and of the general public (section 4(5C))."</p> <p>28.3 "TfL would also draw HAL's attention to section 22 of the Crossrail Act, which provides that the list of objectives in section 4(1) of the 1993 Act shall be treated, in relation to ORR only, as including the objective of facilitating the construction of Crossrail. ORR is also under a duty under section 23(1)(b) of the Crossrail Act to publish a report from time to time on how it has exercised or proposes to exercise its functions in connection with the operation of Crossrail passenger services."</p>			
<b>CHARGING ARRANGEMENTS</b>				
<b>Introduction</b>	<p>29.1 "Part 5 of TfL's response to the Consultation sets out its comments on the charging arrangements (other than</p>			<p>TfL's comments remain, although it is noted that this will be subject to the ORR's</p>



	<p>the proposed FTAC, which is discussed in Part 4) proposed by HAL as part of the Consultation. In particular:</p>			<p>determination.</p>
	<p>29.1.1 HAL does not intend to levy charges for use of the Heathrow Rail Infrastructure on the basis of “the cost that is directly incurred as a result of operating the train service” contrary to the requirements of the Rail Regulations 2005, and has offered no justification for seeking to levy charges in excess of this level (see paragraphs 30 and 31);</p>			
	<p>29.1.2 the proposed charging structure does not take into account the characteristics of the type of rail vehicles operating on the infrastructure and the relative impact of one train compared to another on that infrastructure, which is inequitable, potentially discriminatory and does not incentivise efficient use (see paragraph 32);</p>			
	<p>29.1.3 the proposed charging arrangement means that TfL, through its concession operator MTR Crossrail, will be paying for infrastructure which it does not use, which is unreasonable, inequitable and in contravention of the Rail Regulations 2005 (see paragraph 32);</p>			
	<p>29.1.4 it is not reasonable for users of</p>			

	<p>the Heathrow Rail Infrastructure to be expected to assume volume risk (i.e. HAL recovers its costs in full – including the FTAC – regardless of how many trains use the Heathrow Rail Infrastructure (see paragraph 35);</p>			
	<p>29.1.5 the operation of the airport single till will mean that users of the Heathrow Rail Infrastructure might subsidise aeronautical charges which would be unfair (see paragraph 36);</p>			
	<p>29.1.6 there is no explanation in the Consultation of how the aviation charges set by the CAA periodically in respect of the airport as a whole interface with the charges levied by HAL on users of the Heathrow Rail Infrastructure (see paragraph 36);</p>			
	<p>29.1.7 it appears that HAL is giving itself full and unfettered rights to amend the access charges payable by users, which is unreasonable (see paragraph 37);</p>			
	<p>29.1.8 TfL notes that the proposed charging arrangement is not transparent because:                  (a) station costs are not separately identified by location nor are they recovered under the HAL Station Access Agreement. Instead, these substantial costs are stated to be within the track</p>			

	<p>access charge, with a nominal £1 sum being paid for station access. This proposal is not cost reflective so that users would be obliged to pay a proportion of costs relating to infrastructure it does not use and results in HAL having no incentive to establish efficient station costs (see paragraphs 40 and 41); and</p> <p>(b) it is not clear how the costs of HEOC staff are charged to HAL and how HAL then recovers such costs (if this falls within the proposed track access charge). TfL would expect a “qualifying expenditure” following the Network Rail and HS1 Limited models to be included in the proposed arrangements to ensure the proposals are cost reflective and reflect the costs only of infrastructure which a user uses (see paragraph 41);</p>			
	<p>29.1.9 HAL appears to be proposing charges that are based on “pre-efficient” levels of efficiency. This is contrary to regulatory practice, which is to set OMRC charges on the basis of post-efficient costs. TfL would expect a formal benchmarking exercise to take place aimed at determining (i) whether HAL is at the “efficient frontier” and (ii) if not, the efficiencies that would be required</p>			

	to arrive at the frontier (and therefore the discount in charges from pre-efficient levels)."			
<b>Structure of charges – Rail Regulations 2005</b>	<b>30.1</b> "The Rail Regulations 2005 require charges for the minimum access package and track access to service facilities to be the directly incurred costs. Such costs will be substantially lower than the overall costs of providing the infrastructure. "			TfL's comments remain.
	<b>30.2</b> "Exceptions to the general charging principles are set out in the Rail Regulations. HAL has asserted in the HAL Network Statement that one of the exceptions is the basis of the FTAC to recover the historic investment in the Heathrow Rail Infrastructure. For the reasons set out in Part 4 of this response, TfL considers that HAL has not met the tests required to impose such a charge."			TfL's comments remain.
	<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	TfL does not consider this to be closed and its comments remain.
<b>Approach taken</b>	<b>31.1</b> "TfL describes the approach taken	4.1 refers	No further response -	TfL does not consider this to be

<p><b>by other infrastructure managers</b></p>	<p>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.”</p>		<p>CLOSED</p>	<p>closed and its comments remain.</p>
<p><b>Cost reflectivity and discrimination</b></p>	<p><b>32.1</b> "HAL proposes a single unitary charge to use any portion of the HAL Infrastructure and has proposed this on the basis of a train “movement”. TfL has inferred that this will be a movement to/from the Heathrow Rail Infrastructure/Network Rail boundary from/to the point of origin/final destination of the service. Although not entirely clear, it appears that the single unitary charge is levied irrespective of which stations are called at, how quick a turnaround is provided, the nature of the station services provided at a particular station and the route section traversed."</p>			<p>TfL understands that its assumption set out in the consultation response is indeed correct.</p>
	<p><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</p>	<p>HAL has set it charges and has no plans to change, subject to any ORR determination</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain.</p>

	<p>operator is potentially paying for infrastructure it is not using (and is therefore 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</p>			<p>TfL does not consider this to be closed and its comments remain.</p>

	<p>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 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>HAL states again that much information was provided prior to the consultation including the approach rationale</p>		<p>TfL does not consider this to be closed and its comments remain.</p> <p>The point about providing information prior to consultation is irrelevant to the substantive point being made by TfL regarding cost reflectivity.</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</p>			<p>TfL does not consider this to be closed and its comments remain.</p>

	are determined.			
	<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.”			TfL does not consider this to be closed and its comments remain.
<b>Calculation of fixed track access charge</b>	<b>33.1</b> "There is a brief description of the steps in the process for calculating the FTAC (or investment recovery charge) in section 6.1.2 of the HAL Network Statement. However, there are a number of aspects of the calculation that remain unclear or where the rationale is absent. These are highlighted below by reference to the relevant calculation step described in the HAL Network Statement."			Please see TfL's comments set out below.
	<i>Calculation of the current value of rail Infrastructure Manager Assets using standard UK economic regulatory practice.</i> <b>33.2</b> This does not make clear: 33.2.1 the basis of the initial value of the asset (is it cash spent, is there any adjustment for “inefficient” expenditure); 33.2.2 the timing of investment being recognised (“logged up”) in the asset	32.6 refers	No further response - CLOSED	TfL does not consider this to be closed and its comments remain.



	<p>base; or 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>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>TfL does not consider this to be closed and its comments remain. TfL refers HAL to its consultation response and can provide more detail on the inaccuracies identified by PwC.</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> <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>32.2 refers</p>		<p>TfL does not consider this to be closed and its comments remain. This should be set out 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</p>			<p>TfL does not consider this to be closed and its comments</p>

	<p>for the 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>remain. This may form part of the establishment of the charging framework being undertaken by the ORR.</p>
	<p><i>Calculation of forecast depreciation for the chargeable period</i>  <b>33.6</b> The depreciation period is not specified - is it the useful economic life of the relevant asset?  <b>33.7</b> If so some statement of asset lives for key asset classes would be helpful.</p>	<p>Heathrow has calculated overall revenue requirement following rail regulatory practise and following ORR advice.</p>		<p>TfL requires more information to be provided on this – in line with its consultation response.</p>
	<p><b>33.8</b> The basis of the depreciation calculation is not specified (e.g. straight line, reducing balance).</p>			<p>TfL requires more information to be provided on this – in line with its consultation response.</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>  <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</p>			<p>TfL does not consider this to be closed and its comments remain.</p>

	<p>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><i>Finally the lump sum of FTAC is divided by forecast number of train movements</i>  <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>			<p>TfL requires this information to be specified.</p>
<p><b>Use of FTAC term</b></p>	<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:  34.1.1 the HAL FTAC is an investment recovery charge for the purposes of the Rail Regulations 2005;  34.1.2 the HAL FTAC recovers historic investment in full whereas the Network Rail equivalent does not; and  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</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>	<p>HAL appears to have misunderstood TfL’s comment. Network Rail uses the FTAC term on its network to mean something quite different to the way HAL is using it. TfL’s comment had been to amend this to reflect the reality of what the proposed fixed track access charge is.</p>

	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.”			
<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 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>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 available paths as possible.</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain.</p> <p>HAL’s comment misses the point made by TfL. HAL recovers in full regardless of how many trains use its infrastructure. There is therefore no incentive from an access charging perspective to increase the number of trains using 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</p>			

	movements per hour, rather than the 16 proposed).			
<b>Operation of Aviation Single Till</b>	<b>36.1</b> "In relation to Heathrow airport as a whole, TfL understands from pre-consultation discussions with HAL that the rail access charges will be considered by the CAA to be other single till income in the regulatory framework for the setting of aeronautical charges. Thus all airport single till revenue is applied to reduce aeronautical charges."			TfL's comments have not yet been addressed by HAL and therefore remain.
	<b>36.2</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."	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	No further response - CLOSED	TfL does not consider this to be closed and its comments remain.  TfL considers that the single till model should apply given that its operator will be transporting passengers to the airport so that they can spend money on commercial and other income.  Ultimately, it is Heathrow airport that has benefitted from the construction of the Heathrow Rail Infrastructure, rather than the train operators.
	<b>36.3</b> "HAL will derive considerable benefit from the introduction of the Crossrail services which will benefit its			Please see TfL's comments above on the single till mechanism.

	<p>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>Please see TfL’s comments above on the single till mechanism.</p>
<p><b>Periodic review</b></p>	<p><b>37.1</b> "The process for the review of charges is unclear. The HAL Network Statement simply states that the charges will be reviewed in December 2016 albeit:</p>			<p>TfL's comments remain. The process by which charges will be reviewed and amended has not been made clear.</p>

	<p>37.1.1 the FTAC review will incorporate investment in the network over the period from September 2015 to December 2016 –suggesting that prospective renewal spend for this period is not incorporated in the current level of charges but will be reflected in future charges on a basis to be determined; and</p>			
	<p>37.1.2 the Common Costs Charge review will consider the degree that charges vary with traffic (this means that compliance with the Rail Regulations 2005 would be deferred until a future date).</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>Investment on renewals over the consulted period has been incorporated.</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain.</p>
	<p><b>37.4</b> It is not clear whether HAL intends</p>	<p>Heathrow is minded to</p>		<p>TfL does not consider this to be</p>

	<p>to 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>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>closed and its comments remain.</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>TfL does not consider this to be closed and its comments remain.</p>
<b>Transparency:</b>	<p><b>38.2.1</b> “There is no description in the</p>	<p>Demonstrated to the</p>	<p>No further response -</p>	<p>TfL does not consider this to be</p>



<b>Separation</b>	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, 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).	satisfaction of the ORR	CLOSED	closed and its comments remain.  HAL has refused to provide information on the constitution of its boards to provide the necessary reassurance of separation. In addition, it has also refused to provide confirmatory letter from the ORR that it is satisfied that the separation requirements have been met. This should be set out in the HAL Network Statement.
	<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.”	HEOC will pay the same rate as all other train operators – open to ORR audit as when required		TfL does not consider this to be closed and its comments remain. In particular, this is complicated due to HEOC performing station services for HAL as HAL’s sub-contractor. There is no transparency in relation to this arrangement.
<b>Transparency: Interaction with CAA aeronautical charge setting</b>	<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	38.2.2 refers	No further response - CLOSED	TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is in the process of establishing the charging framework for use of the Heathrow Rail

	<p>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>Infrastructure.</p> <p>Please also see TfL’s comments in the row above.</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>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>TfL does not consider this to be closed and its comments remain. In particular, HAL has refused to provide assurance of this to Sponsors.</p>
	<p>(b) Is there a charge to HEOC, the receipt of 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>All information is subject to regulatory scrutiny and will continue to be available as required to approval bodies</p>		<p>TfL does not consider this to be closed and its comments remain. In particular, HAL has refused to provide assurance of this to Sponsors. Visibility of the proposed arrangements is necessary.</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>Double recovery is not permitted by regulatory bodies</p>		<p>TfL does not consider this to be closed and its comments remain. TfL would like to understand what measures have been put in place to ensure that no double recovery will occur and, in particular, where the revenues arising from the Heathrow Rail Infrastructure will reduce payments elsewhere.</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 indexation and amortisation have been applied to determine the Rail RAB value at a point in time.</p>	<p>19.2.1 refers to this section</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is in the process of establishing the charging framework for use of the Heathrow Rail Infrastructure.</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</p>	<p>TfL does not consider this to be closed and its comments remain.</p>			

	<p>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>TfL does not consider this to be closed and its comments remain.</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>TfL does not consider this to be closed and its comments remain.</p>
<p><b>Transparency: Supporting detail for charges</b></p>	<p><b>38.5.1</b> “TfL was disappointed to see that HAL has provided no supporting detail in the Documentation for the level of charges which it proposes to levy, including:</p>	<p>19.2.1 refers</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain. TfL notes that the ORR is in the process of establishing the charging framework for use</p>

	(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.”			of the Heathrow Rail Infrastructure.
<b>Renewals funding</b>	<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.	Investment on renewals over the consulted period has been incorporated.	No further response - CLOSED	TfL does not consider this to be closed and its comments remain.  TfL requires HAL to confirm what renewals will be undertaken and how HAL intends to recover amounts in respect of asset renewal. TfL also requires HAL to confirm the processes for agreeing future renewal and how this will be incorporated into the access charges.
	<b>39.2</b> TfL would query this statement, as information supplied to TfL by HAL as			Please see comments in row above.

	<p>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><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>Please see comments in row above.</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>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>Whilst TfL notes that certain stations issues are being discussed as part of regular meetings, HAL has confirmed on a number of occasions that it does not intend to alter its proposed charging structure - and therefore TfL’s concerns would remain.</p>

				<p>Whilst TfL acknowledges that the ORR is in the process of establishing the charging framework for use of the Heathrow Rail Infrastructure, TfL remains aggrieved by HAL's proposal, which lacks transparency.</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>TfL's concerns remain. There is no visibility of either the track or stations costs under this arrangement.</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>TfL's concerns remain.</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>TfL's concerns remain.</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</p>			<p>TfL's concerns remain.</p>

	Extension Response.”			
<b>Station Qualifying Expenditure</b>	<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>		40.1 refers	TfL’s concerns remain.
	<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>HAL will consider for inclusion in the Network Code</p>		<p>TfL assumes that HAL is referring to the Network Statement as the Network Code relates only to the operation of the track. Information is required about who will provide what services in the HAL Network Statement and TfL looks forward to receiving HAL’s proposal (subject to considering the drafting).</p> <p>The HAL Station Access Conditions (appropriately amended to reflect TfL’s concerns about the starting point) should also make clear who will be contractually</p>



				responsible for providing such services to access beneficiaries (TfL assumes this will be HAL, because HEOC acting as HAL's sub-contractor) and how this would be charged to users of the station.
	<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.”			Please see TfL's comments in the row above.
<b>EC4T</b>	<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 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;	HAL welcomes specific enquiries here – HAL & NR are in discussions relating to inter relationships – we will update the Network Code as this matures	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.	TfL now understands that HAL will be the infrastructure manager and will enter into track and station access contracts. It is likely to sub-contract certain obligations to Network Rail (track) and HEOC (stations) but will remain contractually responsible to access beneficiaries. In relation to the track, Network Rail will be HAL's agent and point of contact on a day-to-day basis.  TfL looks forward to considering a redrafted HAL Network

	<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>TAC has been updated</p>	<p>Statement to make this clear.</p> <p>TfL looks forward to considering and where appropriate commenting on the proposed amendments to the track access agreement, including (if relevant) how it is proposed to become party to the Network Rail traction electricity rules.</p> <p>TfL understands that Network Rail will charge for energy usage for the Heathrow Rail Infrastructure under the Network Rail track access agreement for the Great Western mainline. This will require an amendment to the track access contract for the Great Western mainline.</p> <p>HAL may (to be confirmed) levy a charge for the electrification assets located on its land, to be charged under the HAL track access contract.</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>This point has not been addressed, although may be picked up as part of the (amended – see above) Network</p>

	42.2.4 How electrical losses in the supply to trains on the Heathrow Rail Infrastructure are dealt with; and	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.		Rail arrangements. Please see above.
	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."	42.2.4 refers		TfL understands that this should not be an issue given Network Rail will be responsible for charging for electricity usage under the Network Rail track access agreement for the Great Western mainline.
<b>Performance regime</b>	<b>44.1</b> "Paragraph 55.4 sets out TfL's comments on the HAL Track Access Contract. In particular, TfL notes that HAL does not propose to include a Part B in the HAL Network Code, meaning that it will have no obligation to monitor performance – making it impossible to have any performance regime."			TfL notes that HAL has now proposed Part B, upon which TfL has provided comments.
	<b>44.2</b> "For the purposes of this Part 5, TfL makes the following points:			
	44.2.1 schedule 8 of the HAL Track Access Contract appears to be a copy of the HEOC/Network Rail regime, raising doubts as to the relevance/applicability of this schedule (as it has been designed			TfL notes that an alternative performance regime has now been proposed by HAL, upon which TfL has provided comments.

	<p>for HEOC as an operator on Network Rail's network, rather than HAL as an infrastructure manager of the Heathrow Rail Infrastructure);</p>			
	<p>44.2.2 HAL's claim that "Part B of the NR Network Code applies" to the use of the Heathrow Rail Infrastructure is unacceptable for reasons set out in paragraph 52.2;</p>			<p>TfL notes that HAL has now proposed a Part B, upon which TfL has provided comments.</p>
	<p>44.2.3 the HAL Network Statement suggests for operator on operator delay that HAL will operate a "STAR model" with payments made to/from HAL. The principles by which operator on operator payment rates are derived for the regime, other than it shall take "account of HAL's liability to pay" those other (impacted) operators are not clear;</p>			<p>TfL notes that payment rates under HAL's proposed performance regime are in the process of being developed.</p>
	<p>44.2.4 HAL will only compensate for its infrastructure failures when it causes a late presentation of an operator's train to the Network Rail network at the rate agreed within the relevant Network Rail track access contract. This is unacceptable because:                  (a) under the Rail Regulations 2005, an infrastructure manager is required to put in place a performance incentive scheme in relation to the use of its infrastructure – i.e. the Heathrow Rail</p>			<p>Please see above.</p>

	<p>Infrastructure. It does not just apply when it impacts on another infrastructure manager's infrastructure;</p> <p>(b) "lateness" is not specifically defined in this context (is it greater than 3 minutes?);</p> <p>(c) under the schedule 8 regime in a Network Rail track access contract, a Monitoring Point at which lateness is recorded is a station where passengers board or alight – HAL is proposing that only the portal is a Monitoring Point. This seems unreasonable as a method of measuring performance across the whole of the Heathrow Rail Infrastructure;</p> <p>(d) HAL assumes (reasonably, in TfL's view) that anyone accessing the Heathrow Rail Infrastructure will also be accessing the adjoining Network Rail infrastructure. However, this assumption has not been followed through in other areas of the HAL Network Statement, e.g. in detailing how access requests to these adjoining networks are coordinated;</p> <p>(e) the applicability of the payment rate in the relevant Network Rail track access contract is not clear as this rate may not be calibrated with reference to</p>			
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	<p>revenue accruing off the Network Rail network and is not tied in to the specifics of the Heathrow Rail Infrastructure; and                  (f) the proposed performance regime is “asymmetric”: whilst the performance target (as TfL understands it) is 95%, a “free zone” is provided to 92% before HAL compensates users (whereas users are expected to make payments to HAL for performance in excess of 95%); and                  (g) the presence of the “free zone”, coupled with the fact that the regime is based on annual (rather than daily or periodic performance) could also mean that HAL has little or no contractual incentives to uphold performance under certain circumstances (for example, if performance had been in excess of 92% for a significant portion of the year, no amount of bad performance could bring to an annualised level that would invoice compensating TfL).</p>			
	<p>44.2.5 In addition, the HAL Network Statement states that the performance regime shall be subject to review each year but is silent on the scope and objectives of such a review, or the process by which it will be carried out. On its face, this is unfair, since it suggests</p>			<p>TfL's comments remain – as part of the development of the performance regime, it will be important to establish when and how the parameters can be reviewed.</p>

	that HAL may be able to unilaterally impose a revised performance regime."			
<b>Abuse of Dominant Position</b>	<b>45.1</b> "In addition to its comments on the impact of the investment recovery charge (see paragraph 27, TfL considers that HAL's wider charging proposals would also constitute an abuse of its dominant position as the infrastructure manager of the Heathrow Rail Infrastructure. Please see TfL's comments in Part 10 on this point."			Please see TfL's comments below.
	<b>45.2</b> "Such an abuse would also have significant adverse effects on customers (i.e. there would be 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	The fares are already proven in the market for HEOC. HAL has no sight of the proposed fare for Crossrail so unable to comment.	No further response - CLOSED	TfL does not consider this to be closed and its comments remain.  HAL's response does not address the significant concerns raised by TfL in its consultation response.

	inferior ways of travelling to and from the airport.”			
<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:</p> <p>46.1.1 the cost that is directly incurred as a result of operating the train service;</p> <p>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</p> <p>46.1.3 substantially less than the CCC suggested by HAL.</p> <p>PricewaterhouseCoopers LLP has carried out some preliminary analysis on behalf of TfL which 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.”</p>	19.2.1 refers	No further response - CLOSED	<p>TfL does not consider this to be closed and its comments remain.</p> <p>TfL notes that the charging framework for the Heathrow Rail Infrastructure remains under consideration by the ORR.</p>
<b>HAL NETWORK STATEMENT</b>				
<b>Introduction</b>	<p><b>47.1</b> "HAL’s Network Statement is inadequate. It does not comply with the requirements for a network statement set out in the Rail Regulations 2005 and it contains significant other deficiencies which mean that it is not fit for purpose."</p>			TfL's comments remain.



	<p><b>47.3</b> "The information set out in the HAL Network Statement is in many respects insufficient, confusing or conflicting, such that prospective users (including TfL) would not be able to apply for, gain access to or operate on the Heathrow Rail Infrastructure."</p>			<p>TfL's comments remain.</p>
<p><b>Failure to meet the requirements of the Rail Regulation 2005</b></p>	<p><b>49.1</b> "The HAL Network Statement does not satisfy the requirements of the Rail Regulations 2005 for the following reasons: 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>RfL have consistently advised it has no requirement for services at HAL stations</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>TfL does not consider this to be closed and its comments remain.</p> <p>HAL's initial response misses the point because whilst TfL is not currently minded to require services at HAL stations, it may in future and indeed other train operators who may wish to use the Heathrow Rail Infrastructure may have a need to be provided with such services.</p> <p>TfL looks forward to considering HAL's revised response, although TfL would need to consider the proposed amendments to the HAL Network Statement and whether they are satisfactory before the revised HAL Network Statement is published.</p>

				<p>TfL notes further that it does not consider Interfleet to be an “independent” expert as they have been engaged by HAL to perform the tasks as instructed by HAL.</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>19.2.1 refers</p>		<p>TfL does not consider this to be closed and its comments remain.</p> <p>TfL notes that the establishment of the charging framework remains subject to ORR determination.</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 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</p>	<p>Previously discussed with ORR</p>		<p>TfL does not consider this to be closed and its comments remain.</p> <p>HAL’s response seems to miss TfL’s point. It is not that HAL has previously discussed these with the ORR; it is that HAL has not provided information on charges</p>

	<p>the lack of transparency in charging for track and station access;</p>			<p>for accessing the services listed in schedule 2 of the Rail Regulations. This therefore does not meet the requirements of the Rail Regulations.</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</p>			<p>TfL does not consider this to be closed and its comments remain.</p>

	<p>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 offer more certainty to prospective users. As a result, TfL considers that HAL has not satisfied the requirements of regulation 11(4)(e); and</p>			
	<p>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</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>		<p>TfL notes that work is being undertaken on drafting a Part D for the HAL Network Code, which TfL has commented on. This will need to be agreed in due course, following which it may be that these point are addressed.</p>

	<p>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 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>			<p>TfL does not consider this to be closed and its comments remain.</p> <p>TfL therefore remains of the view that, subject to the outcome of the above, the HAL Network Statement is not in compliance with the Rail Regulations.</p>

<p><b>Who is the infrastructure manager?</b></p>	<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>	<p>No further response - CLOSED</p>	<p>HAL has confirmed that it will be the infrastructure manager for the purposes of the Rail Regulations and Network Rail will be the infrastructure manager for the purposes of ROGS.</p> <p>TfL remains of the view that this should be clarified in the HAL Network Statement and accordingly is not closed.</p>
<p><b>Regulation</b></p>	<p><b>50.3</b> “HAL appears to have misunderstood how the railway in Great Britain is regulated. For 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</p>	<p>The quoted HAL statement is accurate in that “access” is governed by the 2005 Regulations.</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain. Consistency of references to either the 1993 Act or the Rail Regulations needs to be included throughout the</p>

	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.”			documents.
<b>Stations</b>	<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 “TACs” and there is no mention of station access. TfL considers	HAL will review contact information in Network Statement and Network Code and update accordingly	The position on Station contractual arrangements are currently subject to a workshop with interested parties	TfL notes that stations is subject to ongoing discussions between the parties. Nevertheless, TfL’s view remains that information should be included in the HAL Network Statement to allow prospective users of the station infrastructure to understand how it will be used.

	<p>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>TfL notes that all of the documents need to be provided before the Access Option or any access agreement can be executed.</p> <p>Whilst TfL notes that certain documents have now been provided by HAL, the full suite is required. In particular, it needs sight of the current EAS and TTPRs.</p> <p>Where it is proposed to adopt the Network Rail equivalent document, TfL needs to understand the process for adopting such document and any adaptations which may be required to the document to make it fit for purpose for the Heathrow Rail Infrastructure.</p> <p>TfL’s concern is not simply the process by which such documents will be established in future, but the current versions</p>



				of the documents which apply on what HAL asserts is a Rail Regulations-compliant railway.
<b>Discriminatory capacity allocation criteria</b>	<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 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>	Set out as previously discussed with ORR	<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>The text as drafted remains the same with the exception of a typo tidy up of the numbering.</p>	<p>TfL notes that Part D of HAL’s Network Code has now been drafted. It has been prepared on the basis of Network Rail’s network code, which does not include such a discriminatory provision favouring incumbent operators. HAL should update its Network Statement to ensure that it reflects the decision criteria set out in the HAL Network Statement.</p> <p>TfL would need to consider a revised draft of the HAL Network Statement before it is published to ensure that the suggested changes reflect the HAL Network Code and are non-discriminatory.</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>Please see comments on 42.2 above in relation to traction electricity. The HAL Network Statement should be updated to reflect the agreed position.</p>
	<p>50.7.1 it is HAL’s responsibility as infrastructure manager to provide electricity if it runs an electrified network;</p>			<p>Please see comments in row above.</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>Please see comments above.</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>			<p>TfL’s comment remains.</p>

<p><b>Performance regime</b></p>	<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>	<p>Please see comments on paragraph 44 above.</p>
<p><b>Engineering Access Statement and Timetable Planning Rules</b></p>	<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 statement to be unilaterally set by a third party with which a user of the Heathrow Rail Infrastructure has no contractual relationship;</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>TfL notes that Part D of the HAL Network Code is a document which remains subject to discussion. TfL considers that the HAL Network Statement should be updated to reflect the agreed process for establishing the EAS and TTPRs, in particular, including the details that access proposals may be made to Network Rail in relation to both the Great Western mainline and the Heathrow Rail Infrastructure in one proposal for so long as Network Rail is HAL’s subcontractor.</p> <p>It should also be made clear that</p>

				this is an independent HAL process – with HAL ultimately being responsible for the establishment of the EAS and TTPRs (albeit that it has subcontracted this to Network Rail).
	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.		On the specific point here, consultation of Engineering Access Statement and the Timetable Planning Rules; collectively “the Rules” is covered within the HAL Network Code.	Please see the row above. It is essential that both documents follow the Part D process, as TfL now understands to have been agreed by HAL.
	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.”		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	
<b>Maintenance plan</b>	<b>50.11</b> “Connected with TfL’s comments on the Engineering Access Statement	Noted	No further response - CLOSED	TfL does not consider this to be closed and its comments

	<p>and Timetable 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>	<p>Noted</p>		<p>remain.</p> <p>TfL still needs to see the maintenance and renewals plan and may have comments on the proposals.</p>
<p><b>Heathrow rail infrastructure standards and</b></p>	<p><b>50.12</b> “TfL requires clarity over which NR standards must be complied with to access the Heathrow Rail Infrastructure.</p>	<p>Rolling Stock that complies with Network Rail infrastructure is</p>	<p><i>On Standards:</i> HAL’s approach is reasonable.</p>	<p>TfL acknowledges that the proposal is to use all Network Rail standards which apply.</p>

<p><b>rules and rolling stock compatibility</b></p>	<p>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 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>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>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 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</p>	<p>However, clarity is needed on whether anything in addition to the Network Rail requirements is required to assess rolling stock compatibility for the Heathrow Rail Infrastructure. Anything in addition to the Network Rail standards should be made clear to allow prospective operators to plan accordingly. HAL has provided some details of this in its response and this should be made clear in the HAL Network Statement to allow operators to be aware of the requirements with which they must comply.</p> <p>TfL notes HAL’s proposal to incorporate revised wording and looks forward to considering those documents before they are finally published by HAL.</p> <p>TfL therefore does not consider this to be closed at this stage.</p>
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			<p>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 Code</b>	<p><b>50.13</b> “TfL notes the HAL Network Statement is 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”.</p>	Noted for review	Review	<p>If (as has been discussed) the HAL Network Code will include Parts B and C (which were not included in the consultation draft) then this statement in the HAL Network Statement is likely to be correct. TfL notes that Parts B and C are currently under development.</p>
<b>Access Options</b>	<p><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.</p>	Noted for review	Review	<p>TfL’s comments remain and TfL notes the proposed review by HAL. It needs to be made clear that an access option may be granted not only where specific infrastructure enhancement is</p>

	<p>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.”</p>			<p>required but in other circumstances.</p>
<p><b>Compliance with law</b></p>	<p><b>50.16</b> “The validity period of the HAL Network Statement is September 2015 – December 2016. The DfT has 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</p>	<p>The validity is relevant to the current situation. As new requirements emerge HAL will make proper consideration</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain.</p> <p>The HAL Network Statement is likely to have to be updated when the DfT introduces the new regulations. Accordingly, some wording would be helpful in anticipation of this as otherwise the HAL Network Statement risks not being correct/valid during the purported validity period.</p>



	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.”			
<b>Process for gaining access</b>	<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.”	Contact details are shown in the Network Statement – 50.4 refers	No further response - CLOSED	TfL does not consider this to be closed and its comments remain. In particular, it is not clear what matters HAL will take into account in assessing whether to grant access to a prospective operator.
<b>Absence of relevant information</b>	<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 consider aligning the HAL Network Statement with the Network Rail equivalent.”	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	TfL does not consider this to be closed and its comments remain.
<b>Issuer</b>	<b>50.19</b> “In paragraph 1.1 of the HAL Network Statement, it is not clear what	HAL is the issuer.	No further response - CLOSED	This should be clarified in an updated HAL Network

	the “issuer” refers to – is it the issuer of the Network Statement, a company which offers bonds/financing or some other company?”			Statement. TfL looks forward to considering the revised wording when it is submitted by HAL in due course.
<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	TfL does not consider this to be closed and its comments remain. TfL remains of the view that it would be helpful to set out prospective changes to assist prospective users of the Heathrow Rail Infrastructure.
<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	Noted. TfL thinks it would be helpful to make this explicit in the HAL Network Statement.
<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	Prospective users of the Heathrow Rail Infrastructure should not have to check the public register or ask for further details when they could easily be provided in the HAL Network Statement through the inclusion

				of an additional sentence or two.  TfL therefore does not consider this to be closed and its comments remain.
<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 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 validity period for the HAL Network Code & Statement is until Dec 2016. HAL expects to consult on a relevant basis to the rail industry	No further response - CLOSED	TfL does not consider this to be closed and its comments remain.  TfL would like to understand what HAL considers to be "a relevant basis". If it is reviewing its HAL Network Statement each year, TfL would expect to be consulted on any proposed amendments to that document.
<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	Noted. To be discussed with HAL in due course.
<b>One stop shop</b>	<b>50.25</b> "Both the Network Rail and HS1 Limited network statements refer to the	HAL has no plans to change its current	There is no requirement in the Regulations for an	TfL notes HAL's response. TfL considers that the "One Stop

	<p>“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.”</p>	<p>offering</p>	<p>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...”</p> <p>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 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-</p>	<p>Shop” service may be helpful in coordinating path requests across multiple infrastructure managers within the same country and not just where international operations are involved. Given the nature of the HAL infrastructure, TfL considers it would be appropriate for HAL to use the one stop shop arrangements.</p>
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			ordinating access across other administrations - CLOSED	
<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	Noted – TfL looks forward to considering the revised wording of the HAL Network Statement before it is published.
<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	TfL does not consider this to be closed and its comments remain.  Not all prospective train operators will be aware of the industry standard and so it would be helpful for it to be stated here (as it is in the Network Rail network statement) – otherwise, as currently drafted, it is potentially misleading.
<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	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	TfL does not consider this to be closed and its comments remain.  It would be helpful to understand the proposed works

	introducing other 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. “			and it may be helpful to include an overview of these in the HAL Network Statement.
<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	TfL does not consider this to be closed and its comments remain.
<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	Policies and procedures are developed by HAL and may also incorporate some Network Rail policies where it is appropriate. Train operators should	No further response - CLOSED	TfL does not consider this to be closed and its comments remain.

	<p>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 the Heathrow Rail Infrastructure and may have further comments on this aspect of the proposal.”</p>	<p>contact HAL in the first instance</p>		
<p><b>Missing information</b></p>	<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</p>	<p>HAL has no plans to change at the present time</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain.</p>

	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 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	TfL notes that this remains to be discussed.
<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	Noted for review	HAL will review all documentation before final issue - CLOSED	Noted - TfL looks forward to considering the revised document before it is published.



	<p>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.”</p>			
<b>HAL NETWORK CODE</b>				
<b>Introduction</b>	<p><b>51.1</b> "The HAL Network Code, as currently drafted, could not be incorporated into and form the basis of a contractual relationship between HAL and a user of the Heathrow Rail Infrastructure: the access contract will be between HAL and a train operator for use of the Heathrow Rail Infrastructure – Network Rail will not be a party to it. Therefore the HAL Network Code should contain all of the contractual terms which would allow a user to gain access to the Heathrow Rail Infrastructure."</p>			<p>TfL's comments remain and TfL notes that revisions have been proposed to certain parts of the HAL Network Code, upon which TfL has provided comments.</p>
	<p><b>51.2</b> "In particular, TfL is surprised that HAL is proposing a regime which is fundamentally discriminatory through the proposal that HEOC will not be party to certain aspects of the HAL Network Code (as demonstrated by clause 2.3 of the HAL Track Access Contract). This is</p>			<p>TfL notes that HAL proposes to delete this discriminatory provision. TfL looks forward to reviewing the proposed form of track access contract prior to it being finally published.</p>

	<p>unacceptable and is, in TfL's view, in breach of the core principles of the railway reflected in the Rail Regulations 2005, that operators should be granted access on fair, non-discriminatory and equivalent terms."</p>			
<p><b>Comments on the HAL Network Code</b></p>	<p><b>52.1</b> "Discrimination: HAL proposes that HEOC will not be party to the entirety of the HAL Network Code (as set out in paragraph 2.3 of the HAL Track Access Contract, although the precise parts of the HAL Network Code which HEOC will not be bound by are not specified). A network code is designed to be a core set of (practical) arrangements which relate to the operation of the track infrastructure which all users of that track infrastructure will be bound by. This is a multi-lateral element of the track access contract and ensures that all users of the track infrastructure follow the same processes collaboratively, for the effective operation of the railway. TfL can understand why London Underground Limited would be included on the "exceptions" list set out in paragraph 2.3 of the HAL Track Access Contract because it does not use the track infrastructure comprised in the Heathrow Rail Infrastructure. However,</p>			<p>Please see TfL's comments in the row above.</p>

	HEOC does use that track infrastructure and it is therefore unacceptable, and apparently discriminatory and unlawful, that it would not be bound by every provision of the HAL Network Code in the same way as other users of the infrastructure. HAL's proposal would:			
	52.1.1 have serious practical implications for the operation of the track forming part of the Heathrow Rail Infrastructure as HEOC would not be bound by decisions made under the HAL Network Code; and			
	52.1.2 be inherently discriminatory as HEOC would be granted access to the Heathrow Rail Infrastructure on materially favourable terms which would not apply to other users (by imposing less onerous terms of access). This would be in breach of regulation 7(3) of the Rail Regulations 2005 which require an infrastructure manager to provide access in a non-discriminatory manner."			
<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	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	Part B now redrafted – Sponsors reviewing	

	<p>infrastructure manager to “establish a performance scheme as part of the 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>between them. These will be resolved prior to the start of Crossrail services</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</p>			<p>Please see row above.</p>

	<p>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>			<p>Please see row above.</p>
	<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>It is intended that the Network Rail Delay Attribution Guide will be used for the Heathrow Rail Infrastructure. Discussions are ongoing in relation to Part B of the HAL Network Code and how the Network Rail DAG will be adopted/adapted.</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</p>	<p>Noted for review</p>	<p>Part C redrafted – Sponsors reviewing - CLOSED</p>	<p>TfL does not consider this to be closed as this remains a document which is being discussed between Sponsors and HAL. However, subject to Part C being in a satisfactory form, this is likely to address TfL’s concerns on the absence of a Part C.</p>

	<p>essential from a practical perspective that a process is included for making any such modifications;</p>			
	<p>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;</p>			<p>Please see row above.</p>
	<p>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 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>Please see above.</p>
	<p>52.3.4 HAL's proposal is to "notify" users of changes to the HAL Network Code</p>			<p>Please see above.</p>

	<p>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>Please see above.</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. 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</p>			<p>Please see above.</p>

	<p>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.”</p>			
<b>Part E</b>	<p><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.”</p>	<p>HAL has no plans to change at the current time</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain.</p>
<b>Part L</b>	<p><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</p>	<p>HAL expects to have local arrangements</p>	<p>Agreement was reached with Sponsors that Part L is not required and that local arrangements will be put in</p>	<p>TfL agrees that Part L is not required.</p>



	performance. The Network Rail Network Code also addresses local outputs, which is understandable in the context of a large network. 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.”		place such as the JPIP scheme - CLOSED	
<b>Regulatory Status</b>	<p><b>52.6</b> “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</p>	<p>References to Network Licence will be removed</p> <p>Noted for review</p>	<p>Discussion has been held with the Sponsors and there is no further response at this time from HAL - CLOSED</p>	<p>TfL notes that HAL has started from the Network Rail documentation – which is predicated on the existence of a network licence. TfL does not dispute the existence of the exemption from the requirement to hold a network licence for HAL but certain concepts will need to be captured contractually as a result.</p> <p>[TfL has circulated a list to HAL of the areas which it would expect to be captured by additional drafting in the track access contract.]</p>

	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.”			
<b>Compensation for exercise of Part J rights</b>	<b>52.7</b> “TfL notes that whilst HAL has followed some of Network Rail’s equivalent to Part J, it has not proposed including rights of compensation 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.”	HAL has no plans to change at the present time	No further response - CLOSED	TfL does not consider this to be closed and its comments remain.
<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	It may be appropriate to add concessions – noted for review	TBD	TfL looks forward to receiving a revised draft of the access documentation for review and comment before it is finally published by HAL.

	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.”			
<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 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.”	Noted for review	TBD	TfL notes that this remains to be discussed. TfL’s comments remain.
<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			Part D is the subject of ongoing discussions between Sponsors and HAL. In the current draft,

	HAL's proposals in <i>relation</i> to timetabling in the HAL Network Statement."			no Annex 1 has been included and TfL has queried why this is the case.
<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 <b>included</b> 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	TfL does not consider this to be closed and its comments remain. TfL considers that as the statutory body responsible for transport within London, it should be consulted.
<b>One stop shop</b>	<b>52.12</b> "TfL notes that, when compared with the Network Rail and HS1 <b>Limited</b> network 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.	50.25 refers	No further response - CLOSED	Please see TfL's comments in row 50.25 above.
<b>Definition of "HAL" and "HAL</b>	<b>52.13</b> "HAL appears to have incorrectly set out its own company name in the	Unable to find any reference to "HAL	No further response - CLOSED	Noted. To be confirmed in the revised draft of the HAL

<b>infrastructure”</b>	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- <b>related</b> infrastructure only (i.e. the Heathrow Rail Infrastructure) and not the wider airport infrastructure.”	Airport Limited” in the document. Heathrow Airport Limited is the owner of the Heathrow Spur infrastructure which is clearly defined in the Glossary.		Network Code to be issued in due course, in particular the definition of the HAL infrastructure.
<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	TfL does not consider this to be closed. TfL looks forward to receiving a revised draft of the access documentation for review and comment before it is finally published by HAL.
<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	TfL does not consider this to be closed. TfL looks forward to receiving a revised draft of the access documentation for review and comment before it is finally published by HAL.
<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 <b>maintenance</b> 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	TfL does not consider this to be closed. TfL looks forward to receiving a revised draft of the access documentation for review and comment before it is finally published by HAL.

<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>TfL does not consider this to be closed. TfL looks forward to receiving a revised draft of the access documentation for review and comment before it is finally published by HAL.</p> <p>TfL notes that the points relating to Calendar of Events and Event Steering Group are being picked up as part of the ongoing discussions relating to Part D of the HAL Network Code. The current proposal is to tie in to the Network Rail arrangements.</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</p>	<p>Noted - review</p>	<p>TBD</p>	<p>TfL looks forward to receiving a revised draft of the access documentation for review and comment before it is finally</p>

	<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.”			published by HAL.
<b>Scotland</b>	<b>52.19</b> “There are references in the HAL Network 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.”	Any reference to Scottish legal system will be removed	No further comment - CLOSED	TfL does not consider this to be closed. TfL looks forward to receiving a revised draft of the access documentation for review and comment before it is finally published by HAL.
<b>Typos and definitions</b>	<b>52.20</b> "HAL should undertake a general tidying up of the HAL Network Code prior to its introduction. For example: 52.20.1 there are references to “the Network” rather than the “HAL infrastructure”; 52.20.2 references to “D nn” rather than “D-nn”; 52.20.3 paragraphs D1.1.11 and D5.4.2 have not been properly replicated from the Network Rail Network Code; 52.20.4 Passenger Focus and London TravelWatch should be included as consultees in paragraph D7.2.2; and 52.20.5 certain items used as a defined term are not then defined."			TfL notes that HAL intends to undertake this tidying up exercise. TfL looks forward to considering revised documents before they are finally published.
<b>HAL ADRR</b>				

<p><b>General</b></p>	<p><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 Infrastructure and the Network Rail network. It is also not clear whether the resolution processes would be bound by</p>	<p>HAL expects the industry process will be adopted for HAL.</p> <p>Context to be reviewed – further discussion between NR &amp; HAL is required</p>	<p>ADRR drafting updated post NR discussion - CLOSED</p>	<p>TfL does not consider this to be closed.</p> <p>This remains the subject of discussions between Sponsors and HAL. TfL understands the proposal is for HAL to accede to the Network Rail form of ADRR, including dispute resolution mechanisms. HAL has indicated that amendments may be required to the Network Rail ADRR to reflect this. Sponsors have asked HAL to propose the amendments to the Network Rail ADRR which will be required to reflect the HAL infrastructure. Sponsors have noted that the Network Rail ADRR and the HAL ADRR should be identical given HAL's proposal is to use the Network Rail access disputes arrangements.</p>
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	<p>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</p>		<p>ADRR drafting updated post NR discussions - CLOSED</p>	<p>Part C of the HAL Network Code remains the subject of discussion between HAL and Sponsors. It has been agreed that the HAL Network Code should not include the concept of the Class Representative Committee given the proposed arrangements HAL intends to use. Instead, Part C will be based on the HS1 equivalent form. TfL looks forward to receiving a revised proposal from HAL in relation to Part C.</p>

	<p>manages the operation of the HAL ADRR (but replicated the other constituencies from the standard industry 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</p>	<p>53.1 refers</p>	<p>ADRR drafting updated post NR discussions - CLOSED</p>	<p>Please see TfL’s comments on 53.1 above. Pending receipt and agreement of revised ADRR arrangements, TfL does not consider this to be closed.</p>

	<p>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 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</p>			
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	constitution of the Committee as described in Part J of the HAL ADRR.”			
<b>Delay Attribution Board</b>	<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 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.”	Noted – for review	Part B draft updated - CLOSED	TfL does not consider this to be closed.  Part B of the HAL Network Code remains the subject of discussions and HAL has provided a revised draft, which TfL has commented upon. TfL looks forward to receiving revised drafting from HAL to progress this to a satisfactory conclusion.
<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	Noted – for review	HAL responded to Sponsors - CLOSED	TfL does not consider this to be closed.  Whilst discussions are ongoing in relation to how the HAL disputes resolution arrangements will operate in practice, how the disputes services will be paid for has not

	<p>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.”</p>			<p>been confirmed.</p> <p>TfL requires confirmation from HAL in relation to how the disputes services will be paid for. TfL remains of the view that this will be a cost borne by HAL and will not form part of the proposed “Common Cost Charge” (which TfL has set out its views on elsewhere).</p>
<p><b>Insufficient attention</b></p>	<p><b>53.6</b> “TfL considers that insufficient attention has 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</p>	<p>Noted – for review</p>	<p>ADRR drafting updated post NR discussions - CLOSED</p>	<p>TfL does not consider this to be closed.</p> <p>Please see TfL’s comments on 53.1 above.</p>

	<p>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>			
<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 can be amended in accordance with Part C).”</p>	<p>Noted – review inconsistencies</p>	<p>Documents will; be reviewed and amended to remove any inconsistencies - CLOSED</p>	<p>TfL does not consider this to be closed. TfL looks forward to receiving a revised draft of the access documentation for review and comment before it is finally published by HAL.</p> <p>TfL notes that, given the revised proposal to include a Part B and Part C in the HAL Network Code, certain references may now be appropriate to be maintained.</p>
<b>ORR</b>	<p><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</p>	<p>Noted</p>	<p>ADRR drafting updated - CLOSED</p>	<p>If (as TfL understands) the proposal is to use the Network Rail ADRR then the same process should apply and the</p>

	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.”			ORR would have jurisdiction as a result.
<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	If the intention is (as TfL understands) to use the Network Rail ADRR, then the definition may be wider, although should be tailored to make clear that the ADRR relates to the resolution of disputes both on the Network Rail network and on the HAL infrastructure.  TfL looks forward to receiving a revised draft of the access documentation for review and comment before it is finally published by HAL.
<b>TRACK ACCESS AGREEMENT</b>				
<b>Introduction</b>	<b>54.1</b> "The proposed arrangements set out in the HAL Track Access Contract are inadequate, confused and contradictory. TfL has inferred that HAL has used the current track access agreement for "Heathrow Express" services between HEOC and Network Rail as the starting			TfL's comments remain that the model form track access contract should have been the starting point for its track access contract.

	<p>point for the HAL Track Access Contract. HAL has then made further amendments (many of which are not appropriate) for it to apply to the Heathrow Rail Infrastructure. HAL does not appear to have used the current model form track access contract or current HS1 Limited template framework agreement as the starting point, meaning it is inherently out of date by 20 years."</p>			
	<p><b>54.2</b> "In TfL's view, HAL's proposed Track Access Contract could not form the basis of a contractual relationship between HAL and a user of the Heathrow Rail Infrastructure. TfL considers elsewhere in this response the lack of clarity caused by the contractual relationship being between HAL and the track user being confused with the relationship between HAL, Network Rail and the track user. HAL also demonstrates a lack of understanding of the track access regime in the rail industry and how HAL itself will be regulated."</p>			<p>TfL notes that HAL intends to modify the agreement to make this clear. TfL looks forward to reviewing the revised document before it is finally published.</p>
	<p><b>54.3</b> "In particular, and most seriously, the HAL Track Access Contract is tailored to HEOC and appears to discriminate in favour of its own group company, with other operators being treated less favourably (which links in to incumbent</p>			<p>TfL notes that HAL does not intend to discriminate in favour of HEOC and looks forward to receiving revised documentation for review prior to it being finally published.</p>



	<p>operators being given priority in capacity allocation – please see TfL’s comments in paragraph 52.1). As noted in paragraph 55.1, clause 2.3 of the HAL Track Access Contract compounds this discrimination by indicating that HEOC will not be bound by essential terms of the HAL Network Code – meaning other operators will again be treated less favourably."</p>			
<p><b>Discrimination</b></p>	<p><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 companies as HAL).”</p>	<p><b>Amendments:</b> The HEOC exemption from the Network Code has been removed from Clause 2.3, as requested.</p>	<p>No further response - CLOSED</p>	<p>TfL acknowledges HAL's indication that this paragraph will be deleted.</p> <p>TfL looks forward to considering the proposed final form document in due course.</p>

<p><b>Restrictions of Use</b></p>	<p><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.”</p>	<p><b>Amendments:</b> To avoid confusion, all references to Schedule 4 within the Track Access Contract have been deleted.</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed. TfL notes that discussions are ongoing between Sponsors and HAL in relation to schedules 4 and 8, it being recognised that provisions will be required for both performance and where restrictions of use are taken.</p> <p>TfL has provided comments on HAL’s proposals in relation to schedules 4 and 8.</p> <p>This means that references should be reinserted to the relevant provisions of schedule 4.</p> <p>TfL looks forward to considering the proposed final form document in due course.</p>
<p><b>Charging</b></p>	<p><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</p>	<p><b>Comments:</b> TfL’s assertion that the charging provisions within the Track Access</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and disagrees with HAL’s comments.</p>

	<p>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 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>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.</p> <p><b>Amendments:</b> In response to Tfl’s comments, the following amendments have been incorporated in the Track Access Agreement: The wording at clause 7 has been reinstated in order to properly affect Schedule 7; 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 ability to dispute invoice amounts (including deductions</p>		<p>Clarity is required in the document and amendments would be welcome. Tfl looks forward to considering the proposed final form document in due course.</p>
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		<p>agreed under Schedule 8). HAL hopes this deals with TfL’s concerns relating to the wording in paragraph 1; 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));</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>TfL considers that the payment frequency should be made clear.</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>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 notes the revised wording proposed by HAL.  TfL looks forward to considering the proposed final form document in due course.</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>TfL’s comments remain. This should be an objective test.</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>Direct Debit may be used for payment hence its inclusion.</p>		<p>TfL’s comments remain. Direct debit should be an option only if the Train Operator in question has elected to pay by that method.</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>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;</p> <p>Clarification that invoices are to be issued by HAL monthly in appears has been inserted at Schedule 7, paragraph 2</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>TfL’s comments remain. It remains unclear how the number of train movements will be calculated. Will it be on the basis of the number of train movements <u>expected</u> to run (as set out in the Applicable Timetable) or will it be on the basis of the <u>actual</u> number of trains run?</p> <p>TfL looks forward to considering the proposed amendments and the definition of Train Movement in the final form</p>

			document in due course.
	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 infrastructure (please see paragraph 32 on this);		Whilst TfL acknowledges that the charges vary with usage on a per train basis, no regard is given to the impact on the infrastructure. Heavier trains will damage the infrastructure more and therefore higher charges are reasonable. TfL has specifically acquired the new Crossrail fleet on the basis of its lower weight and reduced impact on the infrastructure – accordingly, it would expect this to be factored into the charges “directly incurred” as a result of the train operating.
	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		TfL’s concerns remain. There should be no unilateral right to amend charges.
	55.3.9 references to “Track Charges”		TfL’s comments remain.

	found in the Network Rail and HS1 Limited model forms of contract should be inserted in the HAL Track Access Contract wherever relevant.”			
<b>Performance Regime</b>	<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:</p> <p>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>	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.	Under review – HAL are likely to propose an amended regime after more with interested parties.	TfL notes that discussions are ongoing between Sponsors and HAL in relation to schedule 8.
	<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>			TfL has provided comments to HAL in relation to its initial proposals for schedule 8.
	<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</i></p>			TfL looks forward to receiving proposed drafting reflecting the agreed principles in due course.
				TfL’s comments remain. The HAL Network Statement should be updated to reflect the outcome of the work referred to above.
				Please see TfL’s comments on paragraph 55.4.

	<p><i>the railway network</i>". HAL's proposed regime applies "between Paddington Station and CTA" 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 "performance achieved" (which triggers performance payments) is not adequately described;</p>			<p>Please see TfL's comments on paragraph 55.4.</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</p>			<p>Please see TfL's comments on paragraph 55.4.</p>



	<p>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:                  (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.                  (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>TfL’s concerns remain, although notes that this is part of the ongoing discussions referred to in paragraph 55.4 above.</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” which is</p>			<p>TfL’s concerns remain, although notes that this is part of the ongoing discussions in relation to schedule 8 and Part B of the HAL Network Code.</p>

	<p>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>TfL’s comments remain.</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>TfL’s comments remain.</p> <p>TfL believes that the preparation of a bespoke HAL infrastructure performance regime could address this concern.</p> <p>TfL looks forward to receiving updated drafting from HAL in due course for its consideration.</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,</p>			<p>TfL’s comments remain.</p> <p>TfL understands that it is proposed to include an equivalent of the Network Rail schedule 4 regime in the access documentation.</p> <p>TfL looks forward to receiving</p>

	<p>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>updated drafting from HAL in due course for its consideration.</p>
	<p>55.4.11 TfL disagrees with the (overly) simplistic 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</p>			<p>Please see TfL's comments on paragraph 55.4.</p>
	<p>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>TfL's comments remain.</p> <p>TfL believes that the preparation of a bespoke HAL infrastructure performance regime could address this concern.</p> <p>TfL looks forward to receiving updated drafting from HAL in due course for its consideration.</p>
<p><b>Limitation on Liability</b></p>	<p><b>55.5</b> "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</p>	<p><b>Amendments:</b> In response to TfL's concerns:</p> <ul style="list-style-type: none"> <li>the Network Rail</li> </ul>	<p>No further response - CLOSED</p>	<p>TfL's comments remain.</p> <p>TfL notes the revised proposals from HAL but will need to</p>

	<p>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 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.”</p>	<p>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.</p> <ul style="list-style-type: none"> <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)</li> </ul>		<p>consider the proposed final form of access agreement in due course.</p> <p>TfL requires clarity on how the liability cap for Contract Years beyond the first Contract Year will be calculated. This needs to be certain and ascertainable from the outset and should not be subject to HAL’s discretion each year.</p>
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		has been amended to £155m.		
<b>Periodic Review</b>	<p><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>	<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	<p>TfL’s comments remain and does not consider this to be closed.</p> <p>However, HAL appears to have misunderstood TfL’s comments – it is not the existence of a review that is objectionable but the parameters relating to such review and the role of the ORR.</p> <p>There needs to be an objective basis for the imposition and amendment of charges for the use of the Heathrow Rail Infrastructure. It cannot be that HAL undertakes an internal review and then unilaterally sets the charges.</p> <p>A formal contractual process needs to be set out in the contract with objective parameters by which HAL should review and revise its charges.</p>
<b>Traction Electricity Rules</b>	<p><b>55.7</b> “TfL is concerned at the many references to “Traction</p>	<p><b>Amendments:</b> All references to</p>	Covered by previous comments on Traction	TfL does not consider this to be closed.

	<p>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. 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</p>	<p>Traction Electricity Rules have been deleted from the Track Access Agreement.</p>	<p>charging process, amendments to NS and required reflection within the TACs covered in 55.2 - CLOSED</p>	<p>Whilst TfL notes paragraph 42.2 and the clarity which has been given by HAL, it has not yet seen the proposed wording of the HAL track access contract which reflects that Network Rail will charge for traction electricity under the Great Western mainline track access agreement.</p> <p>This therefore remains subject to review and comment by TfL.</p>
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	<p>required. The status of the “Traction Electricity Rules” therefore needs some clarification – particularly as elements are incorporated into the HAL Track Access Contract.”</p>			
<p><b>Regulation</b></p>	<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 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>	<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><b>Amendments:</b> 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>	<p>No further response required - CLOSED</p>	<p>TfL does not consider this to be closed.</p> <p>Whilst TfL notes the clarifications given by HAL, this will be subject to TfL reviewing the proposed final form of the document before it is published.</p> <p>In addition, TfL notes that discussions are ongoing in relation to additional contractual obligations which should be included in HAL’s access documentation. As HAL has based its documentation on the Network Rail access documents (which are predicated on the existence of a network licence) it is appropriate to consider what in addition should be included in the contract.</p>

<b>Claims Allocation and Handling Agreement</b>	<b>55.9</b> HAL has not made clear its proposed arrangements for claims allocation and handling. In particular, it is not clear whether it proposes to:			TfL notes that HAL has confirmed it will use the Network Rail CAHA – please see comments in row below.
	55.9.1 have a Heathrow Rail Infrastructure-specific CAHA (which is the approach adopted by HS1 Limited for its infrastructure); or			
	55.9.2 to adopt the Network Rail CAHA (and, if so, whether any amendments are proposed to the Network Rail CAHA to reflect the circumstances of the Heathrow Rail Infrastructure).			
	<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	TfL does not consider this to be closed (as HAL is not yet party to the CAHA), although notes the steps HAL has taken to become party to the CAHA.  It should be made clear in the access documentation that all access parties are required to become party to the CAHA.
<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	<b>Comments:</b> <b>Approach:</b> Schedule 5 of the draft Track Access Agreement represents an already simplified	No further response - CLOSED	TfL does not consider this to be closed.  TfL’s notes HAL’s comments and will review the amended version



	<p>difficult to consider why HAL has taken the approach it has to defining access rights. TfL:</p> <p>55.11.1 questions whether the approach taken by HAL is proportionate for the Heathrow Rail Infrastructure (e.g. references to calling patterns, 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>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 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</p>		<p>of the track access agreement when it is issued in due course.</p> <p>TfL considers that clarity is still required around the flexing right. 60 minutes flex for a particular train would not be appropriate, although TfL would need to understand what HAL means by the “cumulative effect of flexing”.</p>
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		<p>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</p>		
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		<p>Train Slots has been inserted into the template as 60 minutes.</p> <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</p>		
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		Statement will need to be fulfilled by the Train Operator before such Contingent Rights are exercised.		
<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	TfL does not consider this to be closed.  TfL’s comment was not that references to franchise agreements and franchisees should be <u>deleted</u> but that it should be <u>substituted</u> for references to concession agreement and concessionaires to better reflect the services which are expected to operate on the Heathrow Rail Infrastructure.
<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 times. Instead, specific stabling arrangements must be made between the	No further response - CLOSED	TfL does not consider this to be closed.  Whilst HAL’s explanation is noted, this needs to be supported by the contractual wording.

		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	TfL does not consider this to be closed. “Noting” does not appear to have resulted in any amendments being made.  TfL’s comments remain.
<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	TfL does not consider this to be closed. “Noting” does not appear to have resulted in any amendments being made.  TfL’s comments remain.
<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,	Noted	TBD	TfL looks forward to discussing this with HAL.

	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”			
<b>Notification/consultation</b>	55.17 “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);	Noted.	No further response - CLOSED	TfL does not consider this to be closed. “Noting” does not appear to have resulted in any amendments being made.  TfL’s comments remain.
	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);			TfL does not consider this to be closed. “Noting” does not appear to have resulted in any amendments being made.  TfL’s comments remain.
	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			TfL does not consider this to be closed. “Noting” does not appear to have resulted in any amendments being made.  TfL’s comments remain.

	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			TfL does not consider this to be closed. “Noting” does not appear to have resulted in any amendments being made.  TfL’s comments remain.
	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.”			TfL does not consider this to be closed. “Noting” does not appear to have resulted in any amendments being made.  TfL’s comments remain.
<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	TfL does not consider this to be closed.  TfL notes that discussions are ongoing between Sponsors and HAL in relation to Part C of the HAL Network Code. If Part C is finalised in a satisfactory form, this comment may be addressed.
<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	<b>Amendments:</b> TfL correctly notes that the references to the Office of Rail Regulation	No further response - CLOSED	TfL does not consider this to be closed.  TfL will need to consider 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.”	are out-dated. These have now been amended to the Office of Rail and Road.		revised access documentation in due course to consider whether the documents are consistent.
<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 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	<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 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	No further response - CLOSED	TfL does not consider this to be closed.  Whilst TfL notes the proposals made by HAL, this is subject to considering the proposed final form of drafting of the relevant documents.



	other parts of the Documentation).”	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	TfL does not consider this to be closed.  Whilst TfL notes the proposals made by HAL, this is subject to considering the proposed final form of drafting of the relevant documents.
<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 below.”	<b>Comments:</b> Heathrow Airport Limited (“ <b>HAL</b> ”) 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 (“ <b>SAA</b> ”). This	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 again within	HAL has now confirmed that HAL will be responsible for the stations and will grant access to the stations. It will appoint HEOC as its sub-contractor to provide certain services at the stations. It would still be helpful to understand what services HEOC will be providing at the stations and what, as a consequence, HAL will be

		<p>position is reflected in the SAA and HAL Station Access Conditions (“SAC”) as currently drafted.</p> <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 (“HEOC”) 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</p>	<p>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>	<p>providing.</p> <p>TfL notes that HAL has refused to provide Sponsors with a copy of the agreement between HAL and HEOC setting out the scope of the services.</p> <p>TfL would also expect HAL to remain responsible for the acts of its sub-contractor.</p> <p>However, TfL’s significant concerns remain in relation to accounting for and apportioning costs for each station between the users of that station.</p>
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		its obligations under the Station Access Agreement.		
<b>Safety</b>	<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 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.”	<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 so appointed. The conditions precedent requirement has therefore been reinstated.	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 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”.	TfL notes HAL’s comments, subject to reviewing the proposed drafting before the document is finalised.
<b>Missing information</b>	<b>57.3</b> “There are many areas where HAL has not provided Information referred to		No further response - CLOSED	TfL does not consider this to be closed. Its comments remain.

<p><b>(Schedule 2)</b></p>	<p>in the HAL Stations Documentation which would be key to both TfL’s and prospective users' understanding of the proposed arrangements...”</p>			
	<p>1.1 Information relating to charging set out in Part 4 and Part 5 of this response;</p>	<p>Noted.</p>		<p>TfL’s comments remain as this information has not been provided.</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), Existing Agreements (Annex 5) and Disrepairs to be Remedied (Annex 10). This is clearly not</p>		<p>TfL notes that this information will be provided by HAL.</p> <p>TfL looks forward to reviewing (and where appropriate commenting on) the information.</p>

		<p>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	<b>Comments:</b>	Discussed with Sponsors –	TfL does not consider this to be

boundaries;	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.	for security reasons these plans could not be supplied with a consultation document but be available separately - CLOSED	closed, although recognises the reasons why these documents could not be disclosed as part of the consultation.  TfL looks forward to reviewing (and where appropriate commenting on) the information.
1.4 Railways Systems Code (HAL promised on 19 May 2015 that this would form part of the Consultation);	Noted – to be provided		TfL’s comments remain.
1.5 Emergency Access Code (HAL promised on 19 May 2015 that this would form part of the Consultation);	Noted – to be provided		TfL’s comments remain.
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	TfL’s comments remain. HAL has not set out what amendments it proposes to the PDAC to make it suitable for use on the Heathrow Rail Infrastructure.
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	TfL’s does not consider this to be closed. Important information to allow HAL’s proposals to be properly considered remains outstanding.
1.8 Information on asset depreciation assumptions (for example in respect of in-year and in-period RAB additions, and	All information agreed to be provided by HAL as part of the pre-	No further response - CLOSED	TfL’s does not consider this to be closed. Important information to allow HAL’s

	historic additions);	consultation engagement was provided.		proposals to be properly considered remains outstanding.
	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	TfL's does not consider this to be closed. Important information to allow HAL's proposals to be properly considered remains outstanding.
	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	TfL's does not consider this to be closed. Important information to allow HAL's proposals to be properly considered remains outstanding.
	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	TfL's does not consider this to be closed. Important information to allow HAL's proposals to be properly considered remains outstanding.
	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	TfL's does not consider this to be closed. Important information to allow HAL's proposals to be properly considered remains outstanding.
	1.13 Detailed cost information by station;	All information agreed to be provided by HAL as part of the pre-	No further response - CLOSED	TfL's does not consider this to be closed. Important information to allow HAL's

		consultation engagement was provided.		proposals to be properly considered remains outstanding.
	1.14 Models estimating 'costs directly incurred' (short- and/or long-run marginal/incremental costs) in respect of all railway assets;	All information agreed to be provided by HAL as part of the pre-consultation engagement was provided.	No further response - CLOSED	TfL's does not consider this to be closed. Important information to allow HAL's proposals to be properly considered remains outstanding.
	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	TfL's does not consider this to be closed. Important information to allow HAL's proposals to be properly considered remains outstanding.
	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	TfL's does not consider this to be closed. Important information to allow HAL's proposals to be properly considered remains outstanding.
	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	TfL's does not consider this to be closed. Important information to allow HAL's proposals to be properly considered remains outstanding.
	1.18 Details of cash flows through the aviation regulatory framework to	All information agreed to be provided by HAL as	No further response - CLOSED	TfL's does not consider this to be closed. Important



	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).	part of the pre-consultation engagement was provided.		information to allow HAL's proposals to be properly considered remains outstanding.
	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; 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).	Repeated in other sections – noted for further review	TBD	Please see TfL's comments elsewhere in this document.
<b>Basis of Documentation</b>	<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	<b>Comments:</b> TfL correctly notes that the HAL Station Access Agreement and associated Conditions are based on the ORR	Further station related discussions are continuing between HAL and Sponsors.	HAL has confirmed that it will not alter the basis of the Station Access Conditions to use the correct starting model.  TfL's comments therefore

	<p>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 translation. By way of example, see below at paragraph 59.2.”</p>	<p>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 Agreement and Conditions in order to satisfy TfL that all the appropriate rights, protections and balances</p>		<p>remain.</p> <p>TfL will nevertheless consider the revised documentation published by HAL.</p>
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		<p>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></ul>		
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		<ul style="list-style-type: none"> <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 agreement template).</li> </ul>		
<p><b>Proposed Charging Arrangements</b></p>	<p><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</p>	<p>A full list of all rail costs (including those related to the stations) was provided as part of the pre-consultation engagement.</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain outstanding. This is a fundamental concern which TfL has with HAL's proposed arrangements.</p>

	<p>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.”</p>			
<p><b>Regulation</b></p>	<p><b>58.1</b> “It is also not clear from the HAL Stations Documentation whether access</p>	<p><b>HAL Licence: Comments:</b></p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed.</p>

	<p>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</p>	<p>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</p>		<p>Please see TfL’s comments in 52.6 which apply equally in the context of stations.</p> <p>TfL notes that Sponsors are preparing a list of clauses which are required in the access documentation which are not covered by Network Rail documents due to Network Rail having a licence.</p> <p>TfL also looks forward to reviewing the revised documentation from HAL in due course before it is finally published.</p>
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	Documentation.”	<p>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. 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>		
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		<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>		
<b>Structure</b>	<b>58.2</b> "HAL has provided little information on the stations, in terms of the station boundaries, HAL's locus to undertake the equivalent role of station facility owner and how the stations will be operated."			TfL notes that HAL intends to provide this information, subject to security clearances.
	<b>58.2.1</b> "The structure proposed by HAL is poorly defined in terms of the assets"	<b>Comments:</b> HAL has provided	No further response - CLOSED	TfL does not consider this to be closed.



	<p>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 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>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 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</p>		<p>Please also see TfL’s comments on 57.5 above.</p>
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		agreements.		
<b>Locus</b>	<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.”	<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.	No further response - CLOSED	Please see TfL’s comments on 57.1 above.
<b>Role of Heathrow Express</b>	<b>58.2.3</b> “The HAL Station Access Agreement has been prepared on the basis that HAL will be the "station facility owner" and there is therefore an inference that HAL will be responsible for	<b>Comments:</b> Please refer to comments in response to paragraph 57.1 above.	No further response - CLOSED	Please see TfL’s comments on 57.1 above.

	<p>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><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</p>	<p>Noted – there are currently no plans for a change in ownership.</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed.</p> <p>Sponsors intend to propose wording to be included in access documents to ensure continued rights of access for beneficiaries to the Heathrow Rail</p>

	particular station, as well as other interested parties (such as the Mayor of London).”			Infrastructure.
<b>Safety</b>	<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</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>	No further response - CLOSED	Please see TfL’s comments on 57.1 above.

	<p>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>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</p>	<p>There are no plans to charge for the use of the stations.</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed.</p> <p>TfL has fundamental concerns about the proposed charging structure, although notes that this is something which the ORR is considering as part of establishing the charging framework for use of the Heathrow Rail Infrastructure.</p>

	<p>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>Combined Charge:</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 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</p>			
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	<p>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. 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</p>			
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	<p>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, and it is</p>	<p>Noted.</p>	<p>HAL is considering what can be provided</p>	<p>Please see TfL’s comments in 52.6 which apply equally in the context of stations.</p> <p>TfL notes that Sponsors are preparing a list of clauses which are required in the access documentation which are not covered by Network Rail documents due to Network Rail having a licence.</p>



	<p>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</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</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed.</p> <p>TfL notes that its comments related to the categorisation of costs, not the services and amenities themselves, as erroneously assumed by HAL in its response.</p> <p>TfL notes that assurance is still required that HAL will ensure the ongoing upkeep of the</p>

	<p>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 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>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>stations.</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>Basis of Change:</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</p>		<p>Further station related discussions are continuing between HAL and Sponsors</p>	<p>TfL’s concerns remain. Without a charge for a particular station, there is nothing which the change process can do to increase the charge.</p> <p>TfL believes that HAL has misunderstood its comment on the role of the ORR. TfL acknowledges HAL’s comments but notes that TfL’s comments were also in the context of approving a physical change to the station (or hearing an appeal thereon) rather than in relation to an actual amendment to an access contract.</p>

	<p>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 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>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</p>		<p>TfL's comments in relation to Requisite Majority have also not been addressed by HAL – particularly why it has departed from the industry standard approach.</p>
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	<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>relating to the approval or rejection of a Conditions Change Proposal by the ORR must be retained. <b>Requisite Majority:</b> <b>Comments:</b> <b>Noted – no change proposed.</b></p>		
<p><b>Remedies</b></p>	<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 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</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 incorporated into the Track Access Agreement at Schedule 8. HAL believes that this provides a workable regime for claims for poor performance.</p>	<p>No further response - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain. Schedule 8 of the track access agreement relates to performance of trains on the track and does not relate to performance of stations.</p> <p>TfL notes that HAL has tabled a stations performance regime upon which Sponsors have commented and HAL has failed to respond.</p> <p>Nevertheless, fallback remedies will be required for poor performance – either where the performance regime no longer pays out or where performance is not covered by one of the</p>

	arrangements.”			elements of the performance regime.  Therefore TfL’s concerns remains.
<b>Inconsistencies</b>	<p><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).</p>	<p><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.</p> <p>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.</p>	No further response - CLOSED	<p>TfL does not consider this to be closed.</p> <p>TfL looks forward to receiving the revised documents for its review and comment before they are finally published.</p>

<p><b>Scotland, Welsh Government and PTEs</b></p>	<p><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 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.”</p>	<p><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 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.</p>	<p>No further response - CLOSED</p>	<p>TfL notes HAL’s approach.  TfL looks forward to receiving the revised documents for its review and comment before they are finally published, following which it is hoped that this point can be closed.</p>
<p><b>Typos and definitions</b></p>	<p><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”.”</p>	<p><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</p>	<p>Network is defined in Heathrow SACs, HAL Infrastructure is not, and therefore Network will be used. The wording will be amended accordingly - CLOSED</p>	<p>TfL looks forward to receiving the revised documents for its review and comment before they are finally published, following which it is hoped that this point can be closed.</p>

		retained within the agreements.  <b>Amendments:</b> References to HAL within condition B5 have been deleted.		
<b>Insurance</b>	<b>59.9</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	TfL looks forward to receiving further clarification from HAL.
<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 minimise the cost of operations. Although there is a fundamental lack of clarity over how train operators will be charged for	Noted – see ref above.	No further response - CLOSED	TfL does not consider this to be closed.  Whilst TfL looks forward to receiving the updated documents before they are finally published and will review this, its concerns remain.

	<p>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>			
<p><b>Access Dispute Resolution Rules</b></p>	<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</p>	<p>No further response - CLOSED</p>	<p>Please see TfL comments on the HAL ADRR section above.</p>



		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.		
<b>Limit of Liability</b>	<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 proposed limit of liability without having clarity over the charging regime.”	Noted – see ref above.	HAL’s response adequately deals with TfL’s concerns. HAL’s liability cap in the first Contract Year under Schedule 9, paragraph 1(a) has been amended to £155m, the industry norm - CLOSED	TfL would like to understand how the proposed liability cap for future years will be determined.
<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</i> or <i>recklessly</i> . HAL disagrees that this provision undermines the intended structure,	No further response - CLOSED	TfL does not consider this to be closed and its comments remain.

		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.		
<b>ABUSE OF DOMINANT POSITION</b>				
<b>Introduction</b>	<b>60.1</b> "HAL, as the owner and infrastructure manager of the Heathrow Rail Infrastructure, is dominant in the upstream market for access to and management of the Heathrow Rail Infrastructure. HAL is also present on the downstream markets for the supply of public passenger transport services on various point-to-point routes between London Paddington, Ealing Broadway, West Ealing, Hanwell, Southall, Hayes & Harlington and stations on the Heathrow			TfL's comments remain.

	<p>Rail Infrastructure through the provision of Heathrow Express and Heathrow Connect services."</p>			
	<p><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, Competition Act 1998, which prohibits abuse of a dominant position.</p>	<p>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.</p>	<p>No further comment - CLOSED</p>	<p>TfL does not consider this to be closed and its comments remain.</p> <p>TfL notes that the ORR is currently considering the establishment of the charging framework.</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>The level of charges has been determined in accordance with the applicable regulations.</p>		<p>Please see comments in row above.</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 route/location of the underground line.</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>TfL's comments remain.</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>TfL's comments remain.</p>
	<p><b>60.6</b> TfL considers that by virtue of its</p>	<p>HAL does not accept that</p>		<p>TfL's comments remain.</p>

	dominant position and the proposed FTAC, HAL would be in breach of the competition rules (i.e. specifically the prohibition on abuse of dominance)."	its rail access terms are inconsistent with competition law requirements.		
<b>Vertical integration and discrimination</b>	<b>61.1</b> "The rail industry in Great Britain is derived from European Union rules and is designed so that there is no vertical integration between the network owner/manager and the rail operators, in order to provide a 'level playing field' of undistorted competition and avoid discrimination. The infrastructure manager (i.e. Network Rail) and the train operating companies are fully separated. The Heathrow Rail Infrastructure, however, is an exception to this rule given that it is owned by HAL and not Network Rail. The Heathrow Rail Infrastructure and HEOC are vertically integrated (as they are both owned/operated by HAL), which potentially gives rise to the risk of the infrastructure owner/manager (i.e. HAL) discriminating in favour of its downstream entity (i.e. HEOC) to the detriment of competitors. "			TfL's overarching comments remain, although it does not necessarily expect a response from HAL on this point.
	<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	Full separation between the HAL infrastructure manager and the TOC has been achieved with the	Details of how the full separation achieved with full guidance of the ORR has been provided to Sponsors -	TfL does not consider this to be closed. HAL has refused to provide

	<p>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 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</p>	<p>full guidance of the ORR and as such there are no cross subsidies.</p>	<p>CLOSED</p>	<p>Sponsors with information relating to the composition of the relevant Boards and in particular who will be taking the decisions relating to capacity allocation and charging.</p> <p>HAL has also refused to provide confirmation purportedly issued by the ORR that HAL's proposed arrangements comply with the separation requirements.</p> <p>TfL's concerns therefore remain.</p>
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	effectively in the marketplace.			
	<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.”			TfL’s comments remain.
<b>Reduced on-rail competition</b>	<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 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).	Noted.	No further response - CLOSED	HAL has not sought to address TfL’s concerns and they therefore remain.

	<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.</p> <p>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>		<p>Tfl's comments remain.</p>
<p><b>SCHEDULE 2 MISSING INFORMATION</b></p>				
	<p><b>1</b> "Information essential to the Consultation includes (but is not limited to):</p>			



1.1	Information relating to charging set out in Part 4 and Part 5 of this response;			TfL's comments remain.
1.2	Missing information in HAL Annexes;			TfL's comments remain.
1.3	Detailed delineation of station boundaries;			TfL notes that HAL intends to provide this information, subject to security clearances.
1.4	Railways Systems Code (HAL promised on 19 May 2015 that this would form part of the Consultation);			The Network Rail equivalent has been provided – it is not clear how this will apply on the Heathrow Rail Infrastructure.
1.5	Emergency Access Code (HAL promised on 19 May 2015 that this would form part of the Consultation);			The Network Rail equivalent has been provided – it is not clear how this will apply on the Heathrow Rail Infrastructure.
1.6	Performance Data Accuracy Code (HAL promised on 19 May 2015 that this would form part of the Consultation);			The Network Rail equivalent has been provided – it is not clear how this will apply on the Heathrow Rail Infrastructure.
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);			TfL's comments remain.
1.8	Information on asset depreciation assumptions (for example in respect of in-year and in-period RAB additions, and historic additions);			TfL's comments remain.
1.9	Information and rationale for			TfL's comments remain.

	inflation and indexation assumptions;			
	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;			TfL's comments remain.
	1.11 Rationale for the cost of capital used in the calculation of the IRC;			TfL's comments remain.
	1.12 Information on efficiency assumptions employed and/or a rationale for not applying efficiency assumptions;			TfL's comments remain.
	1.13 Detailed cost information by station;			TfL's comments remain.
	1.14 Models estimating 'costs directly incurred' (short- and/or long-run marginal/incremental costs) in respect of all railway assets;			TfL's comments remain.
	1.15 Derivations for Schedule 4 and 8 parameters;			TfL notes that Schedule 4 and 8 remain a work in progress.
	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;			TfL's comments remain.
	1.17 Details of cash flows in respect of: HEx/Heathrow Connect rail revenue, HEx/Heathrow Connect rail opex, Rail asset funding – General rail			TfL's comments remain.

	infrastructure and HEx/Heathrow Connect specific assets; and Access charges levied on Rail Operators; and			
	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)."			TfL's comments remain.
	2 "Information necessary to the effective operation of access contracts includes (but is not limited to:			TfL's comments remain – please see email in relation to the list of documents.
	2.1 Engineering Access Statement;			TfL's comments remain – please see email in relation to the list of documents.
	2.2 Timetable Planning Rules;			TfL's comments remain – please see email in relation to the list of documents.
	2.3 Railway Operational Code;			TfL's comments remain – please see email in relation to the list of documents.
	2.4 Heathrow rail standards and rules;			TfL's comments remain.
	2.5 HAL's maintenance and renewals plan;			TfL's comments remain.
	2.6 Operational resilience plan;			TfL's comments remain.
	2.7 Strategic Capacity Statement;			TfL's comments remain.
	2.8 Sectional Appendix;			TfL's comments remain.

	2.9 Asset Management Plan;			TfL's comments remain.
	2.10 Business Plan (as required under the Rail Regulations 2015); and			TfL's comments remain.
	2.11 Delay Attribution Guide (or equivalent)."			Whilst TfL has considered the Network Rail document, TfL still needs information on how it is proposed to amend the Network Rail document so that it applies to the Heathrow Rail Infrastructure.
<b>SCHEDULE 4 THE NETWORK RAIL AND HS1 LIMITED APPROACHES TO DIRECTLY INCURRED COSTS</b>				
<b>Network Rail</b>	2.3 "TfL notes that HAL has used the term FTAC in the context of its proposed arrangements. Somewhat confusingly, HAL has proposed this as its equivalent of an investment recovery charge and not the fixed costs of the railway which would arise even if no trains were to operate on it."			TfL's comments remain.
<b>HAL's proposal – directly incurred costs</b>	4.1 "As noted in paragraph 29, the default charges for access to railway infrastructure (i.e. for the provision of the "minimum access package" should reflect the directly incurred costs. Any charges over and above this must be justified by reference to an exception to the general charging principle set out in the Rail Regulations 2005."			TfL's comments remain, although it is noted that this remains subject to the ORR's determination.
	4.2 "It is neither clear nor transparent how HAL is proposing to charge for use			TfL's comments remain, although it is noted that this

	<p>of the Heathrow Rail Infrastructure. HAL has not made clear what element of the overall “common costs charge” constitutes the directly incurred costs. It is also not clear how charges have been allocated between track and stations (as noted in paragraph 40, TfL is firmly of the view that track and station access costs should be distinct). HAL has not set out in the HAL Network Statement the directly incurred costs either for the existing HEOC or Heathrow Connect services. Overall, HAL has not provided nearly enough clarity or transparency over the proposed charging arrangements and how they will be calculated to allow consultees to provide a considered response. This is unacceptable.”</p>			<p>remains subject to the ORR's determination.</p>
	<p><b>4.3</b> "As described in paragraphs 2 and 3 of this Schedule 4, there are existing models on the wider Great Britain railway of how track access costs are paid and – importantly – what constitute the “directly incurred” costs. This principle arises from European law, as implemented into English law under the Rail Regulations 2005. HAL is not meeting this fundamental requirement in its proposal. Indeed, its proposal</p>			<p>TfL's comments remain, although it is noted that this remains subject to the ORR's determination.</p>

	<p>would result in MTR Crossrail paying for services which it does not use and discriminates against MTR Crossrail in favour of HAL's incumbent operator, HEOC."</p>			
	<p>4.4 "The absence of a charge for directly incurred costs means that there is no element of HAL's charging structure that reflects the incremental "wear and tear" on the track infrastructure as a result of a particular operator's train service."</p>			<p>TfL's comments remain, although it is noted that this remains subject to the ORR's determination.</p>
	<p>4.7 "In procuring the new rolling stock for the operation of the Crossrail service, one of the factors taken into account by TfL in the specification of the train was its impact on the rail infrastructure. In procuring a lighter train, the impact on the railway would be reduced and therefore the track access charges would be lower. The Bombardier class 345 train is 80 tons lighter than a Siemens/CAF class 332 train (the train used by HEOC) and the wear and tear on curved track is expected to be considerably better than might be inferred just from the weight differential. TfL has estimated using Network Rail's VUC methodology that the rate for a class 345 unit would be at least 35% less than that for a class 332 of comparable length. To not take into</p>			<p>TfL's comments remain, although it is noted that this remains subject to the ORR's determination.</p>

	account the relative characteristics of the rolling stock in question is discriminatory in favour of the incumbent operator."			
	4.8 "Under HAL's proposed structure of charges, no benefit would accrue to the operator of the class 345 units. TfL considers this to be in contravention of the charging principles in the Rail Regulations 2005, discriminatory in favour of HEOC and generally unfair."			TfL's comments remain, although it is noted that this remains subject to the ORR's determination.
<b>SCHEDULE 5 APPLICATION OF THE DUTIES OF ORR TO THE HAL CONSULTATION</b>				
	Schedule 5 sets out TfL's views on how the ORR should apply its duties in making the decisions it is required to do under the Rail Regulations 2005.			In Schedule 5 TfL set out its comments in relation to how the ORR should apply its duties, we note that HAL has not commented (but would not necessarily expect it to).

**Key**

	Issues which remain in contention
	Issues which remain in contention but which are with the ORR for determination (i.e. charging framework-related points)
	Issues which have been discussed and agreed in principle, but which remain subject to considering revised documents.
	Issues TfL agrees have been closed
	Issues which are not live commercial issues