



OFFICE OF RAIL REGULATION

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Dear *Miss Hill & Mr Allen,*

**Crossrail regulatory statement**

You wrote to Bill Emery on 4 November 2008 asking us to publish a statement explaining how we would expect to address certain issues in our consideration of any future application for access rights to the Crossrail central section. I now attach that statement.

I am copying this letter and attachment to Paul Plummer at Network Rail, and I shall arrange for it to be placed on our website in due course.

Yours sincerely

*Michael Lee*

**Michael Lee**



# **ORR Regulatory Statement in respect of the Crossrail Central Section**

## **Purpose of Statement**

1. Before the anticipated signature of a suite of agreements that will establish the detailed basis on which the Crossrail project will go ahead (including a formal commitment of funding), the Department for Transport ('DfT') and Transport for London ('TfL', together 'the sponsors') have asked us to publish a regulatory statement covering two key issues:
  - the establishment in principle of an investment recovery charge pursuant to the Railways Infrastructure (Access and Management) Regulations 2005 ('the Regulations'); and
  - the provision of security of access to the central section, in particular the duration of access rights and the terms of any buy-back mechanism.
2. A copy of the sponsors' letter and supporting Annex is appended to this Statement.

## **Background**

3. Crossrail is a major new piece of railway infrastructure planned for London, with an estimated total construction cost of £15.9bn. It is expected to deliver significant economic, transport and regeneration benefits, through provision of a rapid direct link between London's key economic centres of Heathrow, the West End, the City and the Isle of Dogs; increased heavy rail capacity into central London; and alleviation of congestion on London Underground.
4. Crossrail services are due to be introduced from 2017. They will run both on the existing Network Rail-owned network (the 'on-network section') and on a newly constructed and largely tunnelled central section ('the central section'), which will be owned by TfL. Crossrail services to Heathrow will also operate on the short section of track between Heathrow Junction and Heathrow Airport, which is owned by British Airports Authority (BAA) and which is currently exempt from regulation under the Railways Act 1993 ('the 1993 Act').
5. An outline funding package for Crossrail was announced following the 2007 Comprehensive Spending Review. The central section is expected to account for over 80% of the anticipated total cost, and will be funded through a mixture of grant from DfT, debt raised by the Greater London Authority against a new business rate supplement, debt raised by TfL

against future track access charges paid by train operators and/or the incremental farebox, and private sector contributions. The remainder of the cost relates largely to the works required to enhance the existing Network Rail-owned network to enable Crossrail services to operate on it as envisaged (the 'on-network works'). As part of the outline funding package agreed in 2007, Network Rail has agreed in principle to finance the cost of the on-network works, which, subject to our approval, would be added to its Regulatory Asset Base and amortised over time, and recovered through track access charges paid by the Crossrail train operator.

6. We have already approved an on-network access option, establishing, subject to the detailed provision of that contract, the right to run Crossrail services at set frequencies on Network Rail's network for a period of thirty years. Full details of the application and our decision can be found at <http://www.rail-reg.gov.uk/server/show/nav.214>.

## **Regulatory and Policy Framework**

7. In developing this Regulatory Statement, we have taken into account:
  - our statutory duties, set out in Section 4 of the 1993 Act (as supplemented by Section 22 of the Crossrail Act, which establishes a further objective of facilitating the construction of Crossrail). The duties which we considered were of particular relevance in reaching our decision on the on-network access option are set out in paragraph 18 of our decision paper;
  - The Regulations – in particular Schedule 3 which establishes the framework for access charging, and regulation 18 which sets out the circumstances in which framework agreements of longer than ten years may be appropriate; and
  - Our current policy on long term access contracts, published in January 2008.
8. In developing our current policy for the approval of long term track access contracts, we have sought to balance two key objectives:
  - On the one hand, we have duties to promote the development of the rail network to the greatest extent that is economically practicable, and to enable providers of railway services to plan for the future with a reasonable degree of assurance. This requires investors (including public sector investors) to be comfortable that they will have sufficient rights of access to be able to capture or deliver the benefits envisaged.
  - On the other hand, we have duties to promote competition and efficiency in the provision of railway services, by ensuring non-discriminatory access for different operators (including freight, where applicable). We also have other duties which would lead us to avoid the introduction of too much rigidity into the allocation of

network capacity where alternative uses of capacity in the future may be more beneficial.

## **Sponsor Objectives**

9. We understand that the sponsors are working with Network Rail to develop a 'Statement of Intent', which is expected to establish the sponsors' objectives and the key principles underpinning the detailed arrangements for the operation, maintenance, renewal and regulation of the central section ('the arrangements'). We understand that the sponsors' objectives in respect of the central section are as follows:
- Securing the required quantum and quality of access for Crossrail services, for a duration that reflects the long term lives of the assets under construction and the benefits to be delivered, retaining the flexibility to increase or otherwise vary Crossrail service levels in future;
  - Preserving the flexibility to sell the central section in a way that delivers maximum value for money and ensures that any third party users contribute to the long term costs of the project on a non-discriminatory basis; and
  - Providing incentives to ensure efficiency of operations and maintenance expenditure, with costs transparently identified and equating to the charges paid by train operators for the operation and maintenance of the network, and with clear arrangements for renewals and enhancements.

## **Key Principles**

10. We understand that, subject to the above objectives and to Network Rail's agreement, the Statement of Intent is expected to establish the following principles as the basis for the arrangements:
- i. subject to (ii) below, the central section will be regulated under the 1993 Act;
  - ii. those Crossrail stations where TfL is the facility owner through London Underground Ltd ('LUL') are intended to be exempt from the 1993 Act (and existing LUL stations will continue to be exempt), facilitated by clear lines of demarcation;
  - iii. Network Rail will be the infrastructure manager for the central section rail infrastructure for the purposes of the Railways and Other Guided Transport Systems (Safety) Regulations 2006 ('ROGS');
  - iv. Pursuant to arrangements under the regulatory framework, following completion of the central section, Network Rail will



become the licensed operator of the central section, under either an extension of Network Rail's existing network licence or under a separate licence.

### **Investment Recovery Charge**

11. The sponsors have advised us that they propose to establish an 'investment recovery charge' under Schedule 3 of the Regulations, which permits infrastructure managers to set charges on the basis of the long-term costs of the project as long as two criteria are met:
  - the effect of the higher charges must be to increase the efficiency or cost effectiveness of the project; and
  - the project could not otherwise have been undertaken without the prospect of such higher charges.

12. DfT plans to amend the first of these during its implementation of Directive 2007/58/EC, so as to reflect more accurately the meaning of Article 8.2 of Directive 2001/14/EC to which the Regulations are intended to give effect. Once this amendment has been made, the revised criterion will read:

'the project must increase efficiency or cost-effectiveness'

13. A revised Statutory Instrument was published on 10 November 2008 and is now the subject of consultation at <http://www.dft.gov.uk/consultations/open/eurailpassengers/annexb.pdf>. DfT has proposed that this change would come into effect before 4 June 2009. Accordingly, since the investment recovery charge would be established after this point, we would expect to consider whether the criteria are met on the basis of this revised wording assuming that the Regulations are changed.
14. The sponsors have set out their case, including supporting evidence to show that these conditions apply, in an Annex to their letter, which is appended to this statement.
15. On the first condition, that the project must increase efficiency or cost-effectiveness, the sponsors have summarised the significant volume of work that has been undertaken to quantify the economic and transport benefits generated by Crossrail. At this stage we are satisfied in principle that the Crossrail project should increase the efficiency of London's transport network through the additional capacity generated and reductions in journey times and, on the basis of the evidence put forward, should make a substantial contribution to wider economic growth. It therefore follows that this condition would be met.
16. On the second condition, the sponsors have presented two main arguments:
  - That the possibility of 'third party' (non-TfL) train operators providing services on the central section means that an

investment recovery charge is necessary to give TfL sufficient confidence that it will be able to service the debt incurred to fund construction; and

- That in order to commit funding, the sponsors need to know that their future flexibility to sell the central section is not unduly compromised by uncertainty regarding the ability to levy an investment recovery charge, which would be required in order for the purchaser to be able to recover their initial investment.
17. At this stage, and taking into account the arguments presented by the sponsors, we agree in principle that these two conditions would apply in the case of the central section, and therefore that the infrastructure manager would be entitled to set charges based on the long term cost of the project.
18. The sponsors have not proposed a detailed charging structure at this stage, although they have asked for our confirmation that the following principles could be applied when the detailed charging level and structure is established:
- the investment recovery charge will be paid on a non-discriminatory basis by all operators of passenger services on the central section, in addition to any charges paid to recover the operation, maintenance and renewal of the central section infrastructure; and
  - the investment recovery charge can be set at such a level and for such a duration as to enable the sponsors to recover up to the publicly funded capital cost of the project, and the profile of the charge can take account of the projected profile of revenue on the Crossrail route.
19. The sponsors currently envisage that the details of the investment recovery charge will need to be agreed with us as part of the process of approval of the access agreement and the development of the network statement for the central section. At this stage, we consider that the principles set out above are consistent with the Regulations<sup>1</sup> and that a future investment recovery charge could be established on this basis.

## **Security of Access**

20. Our policy recognises investors' requirement for comfort that they will be able to gain appropriate access in order to realise the benefits of their investment before committing funding. This principle applies to both public and private sector investors.
21. A prospective investor is able to submit an application for a track access agreement to us for approval under the 1993 Act. A track access option

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<sup>1</sup> As we assume for the purposes of this statement that they will be amended.

is a form of access contract used to reserve long term network capacity (and was used by DfT and Network Rail in respect of access rights for Crossrail services on Network Rail's network), but long term track access contracts (that is, with a term of longer than five years) could also be used, subject to similar approval principles. Track access options are generally used when the availability of capacity is less clear, and the relevant access rights are, as a result, less specific.

22. The sponsors have indicated that they are not yet in a position to apply to us for approval of an access agreement for the central section. The reason for this is that, with services not due to commence until 2017, the operating arrangements for the central section have not yet been agreed to a sufficient level of detail – in particular, it has not yet been established who will be the body responsible for granting and charging for capacity.
23. In the absence of a formal application for access rights, the sponsors have therefore requested that we set out in this statement the approach we would expect to take when considering any future application for access rights through the central section. In due course, the relevant parties to an access agreement will need to apply to us for approval in the usual way.

#### **Duration of access rights**

24. The sponsors have indicated that they intend to seek approval for access rights in respect of the central section for a duration of at least fifty years from the start of services. We acknowledge that the sponsors' proposed funding commitment is made on this basis, and that the sponsors are not in a position to seek formal approval for access rights at this stage.
25. When considering the appropriate duration of any long term access rights in respect of the central section, we will have regard to our statutory duties and to the matters described in paragraph 7. Among other issues, we would expect to consider the following, in accordance with our current policy:
  - the duration of any contractual commitments (in particular the length of time required to repay the debt incurred in construction);
  - the expected lives of the assets to be constructed; and
  - the quantum and duration of the benefits delivered, particularly in terms of supporting London's growth and public transport's role in facilitating that.
26. The sponsors have advised that Crossrail is expected to deliver benefits to future generations in much the same way as railway infrastructure constructed in Victorian times delivers benefits to passengers today. TfL has further advised that its current intention is that some of the debt to be raised would be fifty years or longer in duration, in accordance with its

published strategy to match the duration of debt with the life of the assets purchased, reflecting the business case and the expected life of the civil assets to be constructed.

27. We acknowledge that there is no reason in principle why the duration of access rights approved for the central section should be limited to the duration of on-network access rights already approved, for example if the balance between protecting existing users and facilitating new investment were judged to be different.
28. We also note the distinction between the construction of new infrastructure with a specific purpose in mind and for which there are no current users, and enhancements to existing infrastructure for which there are multiple existing users (e.g. freight, different types of passenger service) whose interests and rights need to be protected. However, we shall in any case need to ensure that other potential users can gain access if there is spare or unused capacity or if a significantly more beneficial use emerges, in accordance with our policy.
29. We have already approved a long term track access option between the Secretary of State for Transport and Network Rail for Crossrail services on Network Rail's network. In approving that option, we took into account the benefits of passenger services being able to run through the central section. We would not therefore expect to approve access rights for third parties to the central section which would undermine those benefits or prevent them from being realised.

### **Buy-back provisions**

30. A key feature of our current policy is the inclusion of buy-back provisions within all track access agreements greater than 15 years in duration. The rationale of the buyback policy is to ensure that the allocation of network capacity is not made unduly rigid by the approval of long term access agreements where better uses for network capacity might emerge. This policy is in line with the Regulations, which state that: "a framework agreement must contain terms permitting the amendment or limitation of any condition contained in that framework agreement if such amendment or limitation would enable better use to be made of the railway infrastructure." In theory, there is no limitation on the extent to which buyback could be applied – up to 100% of capacity previously reserved for Crossrail services could be allocated to an alternative use.
31. The key principles of our buyback policy are that the holder of access rights is compensated for its costs if required to surrender rights, but that the compensation should be reasonable and not prevent a more beneficial use of the network, and that the mechanism is simple and transparent.



32. Our buyback policy sets out a default mechanism for calculation of compensation. The sponsors have indicated that they do not believe that the default compensation mechanism would be appropriate in certain key respects for the central section. They have therefore asked us to confirm that we will give appropriate consideration to detailed proposals put forward regarding the buy-back mechanism in any future Crossrail access agreement, in the context of our statutory duties.
33. We confirm that we will consider any specific proposals made by the sponsors for a buy-back mechanism that varies from the current default mechanism, taking account of the balance of arguments at the time in the context of our statutory duties.

### **Designation as 'Specialist Infrastructure'**

34. We note the sponsors' intention that the central section should be designated as 'specialist infrastructure' under the Regulations. Any such designation would be a matter ultimately for the infrastructure manager, subject to appropriate consultation; however at this stage, we can see no reason in principle why we would object to such a designation.



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**Bill Emery**

Chief Executive  
Office of Rail Regulation  
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4 November 2008

Dear Bill

**Crossrail Regulatory Statement**

1. As you will be aware, the Department for Transport ("DfT") and Transport for London ("TfL"), as Sponsors of the Crossrail project, agreed a Heads of Terms in November 2007 which established the arrangements under which the Crossrail project could be taken forward. The Sponsors are now proposing to enter into a suite of detailed agreements which will establish a firm legal basis on which the Crossrail project will proceed (the "Core Agreements"), including the detailed funding arrangements.

2. The Core Agreements will commit the Sponsors to providing up to £13billion of direct funding to Cross London Rail Links Ltd ("CLRL") to enable CLRL to deliver the project. Around £6 billion of this is anticipated to be sourced from debt to be raised by TfL and the Greater London Authority. Before making formal commitments of such substantial amounts of public funding, DfT and TfL require appropriate comfort regarding their future ability to access the benefits of their investment for its intended purpose and to service Crossrail-related debt.

3. The Office of Rail Regulation ("ORR") recently approved a Track Access Option between Network Rail and DfT to reserve access rights for the planned Crossrail services operating on Network Rail's network. The ORR's decision provides, amongst other things, for rights of access to Network Rail's network for Crossrail services for a period of 30 years, and is subject to the inclusion of 'use it or lose it' provisions and a buy-back mechanism.
4. The detailed arrangements for the operation of the Central Section have not yet been finalised, and it is not therefore possible to apply to the ORR formally for approval of access rights in respect of the Crossrail Central Section. The Sponsors have nonetheless set out two key issues that need to be addressed prior to execution of the Core Agreements:
- i. The establishment in principle of an Investment Recovery Charge pursuant to the Railways Infrastructure (Access and Management) Regulations 2005; and
  - ii. Providing security of access to the Central Section, in particular the duration of access rights and the terms and mechanics of any buy-back mechanism.
5. These issues, and the Sponsors' case, are set out in detail in Annex A.
6. As you know, officials from DfT and TfL have been in informal discussion with the ORR during the summer as to how the Sponsors might achieve sufficient comfort over these issues, in order to be able to commit to funding Crossrail.
7. Pursuant to the ORR's objectives in section 4(1) of the Railways Act 1993 as modified by Section 22 of the Crossrail Act 2008, which confers on the ORR an objective to facilitate the construction of Crossrail, the Sponsors would therefore be grateful if the ORR could publish a Regulatory Statement setting out how it would intend to address these issues in its consideration of a future application for approval of Central Section access rights and the appropriate charging framework, on the assumption that the Central Section is to be regulated under the Railways Act 1993.
8. The Sponsors consider that it is critical that this statement is made before the Core Agreements are executed, which is expected in mid-November.
9. This letter is copied to Paul Plummer at Network Rail.

Yours sincerely



Bronwyn Hill



Steve Allen



## Annex

### Background

1. This document is provided by DfT and Transport for London (together, Crossrail's **Sponsors**) to the ORR, in order to set out:
  - i. why the section of the Crossrail route that is not part of Network Rail's existing network (the **Central Section**) meets the criteria set out in Schedule 3 of the Railways Infrastructure (Access and Management) Regulations 2005 (the **Regulations**) for the levying of a charge that enables the owner of the Central Section to recover the long-term costs of the project (the **Investment Recovery Charge**), upon which the Sponsors' funding of the project is dependent;
  - ii. the assurances sought by the Sponsors regarding security of access.

### Investment Recovery Charge

2. The Sponsors propose that an Investment Recovery Charge is established, to be paid by all operators of passenger services on the Central Section, to be paid in addition to any charges paid for the operation, maintenance and renewal of the Central Section infrastructure.
3. The Regulations currently provide in Schedule 3 paragraph 3 that an Infrastructure Manager as defined in the Regulations (**Infrastructure Manager**) may set or continue to set higher charges on the basis of the long-term costs of the project, as long as:
  - i. the effect of the higher charges must be to increase the efficiency or cost-effectiveness of the project; and
  - ii. the project could not otherwise have been undertaken without the prospect of such higher charges.
4. The Regulations transpose the requirements of the applicable European Directives into UK law. DfT plans to amend the first of these during implementation of Directive 2007/58/EC so as to reflect more accurately the intended meaning of Article 8.2 of Directive 2001/14/EC, which is clearer in the original Directive. The proposed Statutory Instrument is being published and consulted on in November. When published, the consultation will be available to view at <http://www.dft.gov.uk/consultations/open/>. The provision in question is expected to come into force on 3 June 2009.
5. The effect of this change will be to substitute the following wording in place of condition (i):



- i. 'the project must increase efficiency or cost-effectiveness; and'
6. Accordingly, the case put forward by the Sponsors is on the basis of this revised wording.

### **The effect of Crossrail on efficiency or cost-effectiveness**

7. The construction of Crossrail will have a significant positive impact on the efficiency of London's transport network, and will support the projected growth of London's population, employment and economy over the coming decades. This was recognised by Parliament in the passing of the Crossrail Act on 22 July 2008.

8. Significant work has been undertaken to develop the Crossrail business case. Amongst the key conclusions of this body of work are that:

- i. London's population is projected to grow by around 800,000 – 1 million by 2025.<sup>1</sup> London's employment is projected to grow by a similar amount, particularly in central areas and on the east-west axis<sup>2</sup>. This is projected to result in a growth in peak public transport demand of around 25% from 2006 levels<sup>3</sup>, which unless catered for will impose significant further strain on a system which is already operating at or above its efficient operating capacity. This projected growth can therefore only be supported by an efficient public transport network.
- ii. Crossrail adds 10% to London's overall transport capacity, increasing peak east-west capacity by 40%, total rail capacity to the City by 21% and capacity to Canary Wharf by 54%<sup>4</sup>, helping to cater for this growth.
- iii. Crowding and congestion significantly reduce the efficiency of a public transport network, by increasing station dwell times and inhibiting the effective movement of large numbers of people. Together with the PPP, Crossrail achieves a 45% reduction in crowding on Tube and DLR and a 23% reduction in rail crowding<sup>5</sup> when compared with a 'do nothing' case.
- iv. Crossrail contributes to wider economic efficiency by directly facilitating 30,000 additional jobs in central London by 2027, in an area which is 35% more productive than the UK average, and supports development potential in excess of 260,000 jobs (around three quarters of which are

<sup>1</sup> See [http://www.statistics.gov.uk/downloads/theme\\_population/SNPP-2006/InteractivePDF\\_2006-basedSNPP.pdf](http://www.statistics.gov.uk/downloads/theme_population/SNPP-2006/InteractivePDF_2006-basedSNPP.pdf) and

<http://www.london.gov.uk/gla/publications/factsandfigures/dmag-briefing-2008-07.pdf>

<sup>2</sup> See [http://www.london.gov.uk/mayor/economic\\_unit/docs/employment-briefing-final.pdf](http://www.london.gov.uk/mayor/economic_unit/docs/employment-briefing-final.pdf)

<sup>3</sup> *Transport 2025 – Transport Vision for a Growing World City*, Transport for London, page 28, available from <http://www.tfl.gov.uk/corporate/about-tfl/publications/1482.aspx>

<sup>4</sup> See: <http://nds.coi.gov.uk/imageLibrary/downloadMedia.asp?MediaDetailsID=217825>. See also *Transport 2025*, page 80

<sup>5</sup> *Ibid*, page 80



in the Isle of Dogs), leading to GDP benefits over 60 years of at least £20bn in 2002 prices<sup>6</sup>.

- v. Crossrail also greatly increases the resilience of the Isle of Dogs by reducing dependence on the Jubilee Line and DLR, giving people alternative route options in the event of disruption.
  - vi. The Eddington Transport Study<sup>7</sup> found that aviation has a crucial role to play in promoting economic development and in maintaining the UK's strengths. Crossrail improves efficient public transport access to London's key international gateways by:
    - o providing a significant reduction in journey times to Heathrow (for example, providing a 43 minute direct link from Heathrow Airport to the Isle of Dogs);
    - o providing a direct interchange at Farringdon to the upgraded Thameslink route, offering a direct link to Gatwick Airport; and
    - o freeing up platform capacity at Liverpool Street, enabling additional rail capacity to serve Stansted Airport.
  - vii. Crossrail brings additional social benefits such as time savings, reduced crowding, benefits to mobility impaired passengers and improved access to employment opportunities in deprived areas of London, all of which serve to increase the attractiveness of London as a place to live and thereby its future economic competitiveness.
9. Additional analysis supporting these conclusions can be found in the following documents:
- i. The original Crossrail business case presented by Cross London Rail Links to the Department for Transport in 2003 suggested a 1.99:1 benefit:cost ratio for a 'benchmark' scheme. This used a traditional appraisal methodology: the majority of the benefits were through time savings and crowding relief:  
<http://www.crossrail.co.uk/80256B090053AF4C/Views/D855FA48016C2F9E80256D9800592C06>
  - ii. In 2004, this business case was reviewed by Sir Adrian Montague on behalf of the Department for Transport, who concluded that the scheme appeared to offer value for money, and that even if the assumed growth were to fail to materialise at all, the business case would still be positive. Sir Adrian also proposed some changes to the scheme to reduce risk.  
<http://www.dft.gov.uk/pgr/rail/pi/crossrail/archive/reviewofthecrossrailbusinesscase>
  - iii. DfT later developed an economic appraisal, representing a development in traditional appraisal methodology by taking into account wider economic benefits such as increased productivity and

<sup>6</sup> *Ibid*, page 83; Crossrail economic appraisal <http://www.crossrail.co.uk/pages/economicappraisal.html>

<sup>7</sup> See <http://www.dft.gov.uk/about/strategy/transportstrategy/eddingtonstudy/>



the effects of agglomeration. This showed a benefit to cost ratio of 2.6:1 and highlighted the potential for GDP benefits of ca. £20bn in 2002 prices (about £24bn in 2008 prices).

<http://www.crossrail.co.uk/pages/economicappraisal.html>

- iv. Subsequent analysis by Volterra Consulting suggested that this figure was highly conservative, and suggested that GDP benefits could be as high as £67bn in 2002 prices.

[http://www.cbuchanan.ie/project\\_sheet/economicbens.pdf](http://www.cbuchanan.ie/project_sheet/economicbens.pdf)

- v. A summary of Crossrail's benefits was previously submitted to the ORR as part of its consideration of the Crossrail On Network Access Option, exploring both the transport and the economic benefits:

[http://www.rail-reg.gov.uk/upload/pdf/s18-xrail-benefits\\_rep.pdf](http://www.rail-reg.gov.uk/upload/pdf/s18-xrail-benefits_rep.pdf)

**Crossrail could not otherwise have been undertaken without the prospect of such higher charges**

10. The second criterion that must be met under the Regulations for an Investment Recovery Charge to be levied is that 'the project could not otherwise have been undertaken without the prospect of such higher charges'. This section sets out why the Sponsors consider that the Crossrail Central Section meets this criterion.

*Importance of Investment Recovery Charge for servicing prudential borrowing*

11. TfL has committed to contribute up to £7.7bn to fund Crossrail's construction, of which approximately £2.5bn is anticipated to be raised directly by TfL through prudential borrowing. To service this debt, TfL will rely upon the revenue generated by Crossrail train services, which is expected to generate an operating surplus (i.e. after rolling stock, operating and infrastructure costs) over the lifetime of the project.

12. Even though it is expected that the majority of train services through the Central Section will be provided under a TfL-let concession, it is possible that there will be 'third party' operators. For the Sponsors to have the necessary confidence in TfL's ability to service its prudential borrowing utilising its projected surpluses, the Sponsors need the assurance that all operators of passenger services using the Central Section will contribute to the long term costs of the project through payment of the Investment Recovery Charge on a non-discriminatory basis, since without this, any surplus would be retained by third party operators.

*Importance of Investment Recovery Charge to preserve Sale Objective*

13. The Sponsors intend that their proposed funding commitment to Crossrail is on the basis that the option is retained to sell the Central Section after completion (the '**Sale Objective**'). Such a sale was contemplated in the



Crossrail Heads of Terms<sup>8</sup>; the proposed Sponsors' Agreement, to be entered into between DfT and TfL, makes explicit provision for TfL to:

*"sell, transfer, lease or otherwise dispose ... of its interest in the Central Core Area, provided that ... any such disposal ... shall be subject to the Secretary of State giving his prior written consent."*

14. In order to commit funding, the Sponsors need to know that their future flexibility to sell the Central Section is not unduly compromised by uncertainty regarding the ability to levy an Investment Recovery Charge.

15. There are a variety of reasons why the Sponsors could decide to sell the Central Section. These include:

- i. for reasons of economic or operating efficiency – for example if the Sponsors judged that the infrastructure would be more efficiently operated under private sector ownership;
- ii. for reasons of financing or affordability – for example to facilitate future enhancement of the CTS through the use of private sector funding, or if a sale would release funds that enabled additional investment in London's wider transport infrastructure, through repayment of debt incurred in constructing the asset;
- iii. for wider policy reasons.

16. Any decision to sell the Central Section would only be taken following a thorough assessment of value for money and subject to the appropriate consents, which have been set out in the Sponsors Agreement.

17. An Investment Recovery Charge would be an essential underpinning of any sale, since it would be through the ability to levy such a charge that the new owner would look to recover their investment. The Sponsors therefore consider that the Sale Objective requires the ORR's agreement in principle that the criteria for the establishment of an Investment Recovery Charge are met.

18. Although the detailed legal and operating structure for the Central Section remains under development, certain key principles have been established:

- i. TfL will be responsible for securing the provision of Crossrail train services, through a concession let by Rail for London Limited;
- ii. TfL will, through its ownership of Cross London Rail Links Limited and London Underground Limited, own the Central Section infrastructure<sup>9</sup>.

<sup>8</sup> Available online at <http://www.dft.gov.uk/162259/165234/302038/headsofterms.pdf> - see paragraphs 10.2 and 4.12)

<sup>9</sup> Although TfL will be the legal owner of the infrastructure, it has not yet been established who would be *Facility Owner* under the Railways Act 1993 or *Infrastructure Manager* under the Regulations



19. The Sponsors anticipate that the detailed terms of the Investment Recovery Charge would be established prior to the start of operations. Therefore the Sponsors are looking for confirmation now that, when determining the level and structure of the Investment Recovery charge, they will be able to apply the following principles:

- i. the Investment Recovery Charge will be paid on a non-discriminatory basis by all operators of passenger services on the Central Section, in addition to any charges paid to recover the operation, maintenance and renewal costs of the Central Section infrastructure; and
- ii. the Investment Recovery Charge can be set at such a level and for such a duration as to enable the Sponsors to recover up to the publicly funded capital cost of the project, and that the profile of the charge can take account of the ability of the train service concessionaire to afford such a charge.

### **Security of access**

20. Section 22 of the Regulations provides for infrastructure to be designated as 'specialised'. In order to preserve the high passenger carrying capability that justifies construction of Crossrail, the Sponsors' intention is that the Central Section will, subject to the appropriate consultations (including the ORR) be declared as specialised infrastructure under section 22, with priority being allocated to high capacity metro services. The Sponsors therefore seek confirmation from the ORR that at this stage it can see no reason why it would object to such a designation.

### *Duration of access*

21. The application by DfT and Network Rail for a 50-year on-network Track Access Option argued, amongst other things, that:

- i. a 50 year duration was required in order to achieve an acceptable benefit:cost ratio under the business case; and
- ii. the Crossrail project was to be funded in part with debt of at least 50 years in duration, commensurate with the lives of the assets constructed.

22. The ORR considered these factors in the context of Crossrail services being overlaid onto an existing, multi-user network, and concluded that a 30 year duration with a buy-back mechanism was more appropriate.

23. The Sponsors intend to apply for a 50 year duration for Central Section access rights, and consider that the ORR, in seeking to balance its various objectives and statutory duties, may come to a different view in the context of newly constructed infrastructure for which there are no existing users whose

interests need to be protected. The Sponsors therefore seek confirmation from the ORR that:

- i. following the ORR's approval of on-network access rights for Crossrail train services for a period of 30 years, it can be assumed by the Sponsors that the Central Section capacity required to take advantage of those rights will also be made available, and for the same duration;
- ii. that there is no reason in principle why the duration of any access agreement for the Central Section should not be greater than 30 years, for example if the balance between protecting existing users and facilitating new investment were judged to be different; and
- iii. that, when considering the appropriate duration of access rights in respect of the Central Section, the ORR acknowledges and accepts that the Sponsors' proposed financial commitment is on the basis of being able to achieve the proposed access rights.

#### *Buy-back*

24. The Sponsors understand that current ORR policy is that access agreements in excess of fifteen years' duration should contain a buy-back mechanism from year 10. The default mechanism for compensation is that this should be fixed at the outset and based on a tariff declining linearly to zero over the duration of the agreement.

25. Whilst the principle is accepted that a long term access agreement for the Central Section is likely to be subject to buy-back provisions, the Sponsors do not believe that the default compensation mechanism set out in the ORR's current buy-back policy is appropriate in certain key respects for the Central Section. Confirmation is therefore sought that the ORR will give appropriate consideration to detailed proposals put forward regarding the buy-back mechanics in any future Crossrail access agreement, in the context of its statutory duties.