

Paul Stone
Senior Access Executive
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN
Telephone: 020 7282 0112
Email: paul.stone@orr.gsi.gov.uk



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Geoff Jones
Head of Regulation
HS1 Limited
12th Floor, One Euston Square
40 Melton Street
London
NW1 2FD

Chinua Labor
Regulatory Contracts Manager
HS1 Limited
12th Floor, One Euston Square
40 Melton Street
London
NW1 2FD

Dear Chinua and Geoff,

HS1 Periodic Review – 5YAMS consultation response

1. Many thanks for the opportunity to comment on HS1 Ltd's Five Year Asset Management Statement consultation document ("5YAMS"), launched on 18 October 2013. Please see below ORR's response to the questions set out by HS1 Ltd in its consultation and some general comments on the periodic review process. ORR is content for this response to be made public.
2. The comments below extend to the consultation version of the 5YAMS only. We may have additional comments on the final 5YAMS document (and supporting documents) submitted to ORR for approval or determination, or in the light of any further information received.

Question 1: Are there any gaps in how we have addressed the Concession Agreement requirements for the 5YAMS? If yes, please explain?

3. Whilst ORR is content that the Concession Agreement requirements have been correctly identified in the 5YAMS consultation document, requests for further information and our response on specific areas of the draft 5YAMS are set out below.

Question 2: Do you believe that the NR(HS) asset management plan assumptions are appropriate? Are there any additional assumptions required that we have not captured in this section?

4. On 6 November 2013, ORR separately provided a number of comments to NR(HS) and HS1 Ltd on the Asset Specific Policies underpinning the 5YAMS. These comments are not repeated in this response, but should be taken as a constituent part of ORR's overall formal response. ORR is currently considering the NR(HS) and HS1 Ltd response on these comments. Other more general comments on the 5YAMS content are provided below.

5. Section 10.1.2 of the 5YAMS describes an intention to move to more "advanced asset management techniques". It would be helpful to understand what the timescales for this are.

6. Regarding the asset management strategy, the Interfleet report identifies some issues that increase costs, e.g. in relation to standards. We would be grateful for further information on how HS1 Ltd has challenged the areas in which cost may increase in CP2 and beyond.

7. Whole lifecycle cost modelling scenarios should test how far it is possible to go before risk increases to an unacceptable level. There will be a range of options between Baseline and Low Cost – High Risk but as there is no description of the assumptions for each scenario, it is difficult to determine whether or not there is scope to 'improve asset intervention without increasing performance risk' when spend is reduced by 5% or 50% (for example). There may be scope for some trade off of performance given the benchmarks, but this does not seem to have been considered. We have asked HS1 Ltd whether any uncertainty analysis has been carried out to determine downside risks in particular. We would be grateful if HS1 Ltd could expand on its view on performance trade-offs.

Question 3: Can you please confirm that we have properly captured the output requirements for customers?

8. As HS1 Ltd notes in its draft 5YAMS, HS1 Ltd does not have binding regulatory output targets with penalties for failure. However, HS1 Ltd does have performance floor targets enshrined in the Concession Agreement, which are subject to the enforcement procedures set out in Schedule 8 of the Concession Agreement. As part of the PR14 process, ORR will have regard to our obligations set out in the Concession Agreement and Railways Infrastructure (Access and Management) Regulations 2005 (including our statutory duties under section 4 of the Railways Act 1993).

9. ORR recognises that the set-up of HS1 Ltd is very different to that of Network Rail, and that HS1 Ltd has commercial incentives and pressures upon it to increase its efficiency and offer attractive outputs, including around network performance, to existing and potential customers alike.

10. With this in mind, ORR has no specific comments at this point on the proposed outputs for CP2, but welcomes the drive towards greater efficiency, the reduction of costs and an even more increased focus on consumer and customer requirements in CP2 and beyond. We may however wish to make further comments on the proposed outputs for CP2 once we have had the opportunity to consider the responses of other consultees to the 5YAMS.

Question 4: Do you have any comments on the appropriateness of our safety policy and approach in CP2?

11. ORR regards the safety policy and approach proposed for CP2 as appropriate, given the safety responsibilities of HS1 Ltd. NR(HS), as operator and maintainer of the infrastructure, is required under the safety authorisation to have its own safety management system and targets.

12. With this in mind, ORR feels that the draft 5YAMS should be clearer on the relationship between the responsibilities of HS1 Ltd and those of NR(HS), to ensure that there is no possibility of confusion arising from HS1 Ltd's stated plans for CP2 and would appreciate greater clarity on this in the 5YAMS.

Question 5: What other factors should we consider in developing our asset management plans?

13. We believe that further work is required to develop HS1 Ltd's approach to whole lifecycle cost modelling and the options that are evaluated through these tools. Whilst we appreciate that NR(HS) have provided proposals to meet HS1 Ltd's objectives on performance there may be some opportunities to reduce whole lifecycle cost through accepting a lower level of performance (although we appreciate that this would not be deemed acceptable by HS1 Ltd's customers). The whole lifecycle cost models also need to consider options for the co-ordination of renewals interventions that might provide a lower overall whole lifecycle cost.

14. HS1 Ltd also needs to give consideration to developing further Asset Specific Policies (ASPs) to address those assets that are not covered by the current suite of ASPs.

15. Finally, we have asked NR(HS) to provide a bottom up maintenance plan in order to reconcile the top down benchmarking.

Question 6: Are there any other upgrades that we should be considering for CP2?

16. We note that GSM-R is the only planned Specified Upgrade for CP2. As required by the Concession Agreement, Specified Upgrades must be approved by ORR, following receipt of certain information (as set out in the Concession Agreement) to justify the use of the Specified Upgrade mechanism and the recovery of an Additional IRC. At the time of writing, ORR is yet to approve installation of GSM-R as a Specified Upgrade, recoverable through the levying of an Additional IRC, for CP2. Additionally, ORR has not yet received the detailed information pack referred to in section 10.10.1 of the 5YAMS, and will be unable to approve the Specified Upgrade route without it.

17. We consider that use of the Specified Upgrade route and Additional IRC mechanism is a matter for HS1 Ltd and its stakeholders to develop and submit an implementation proposal. ORR's role is to ensure the proposal meets the requirements of the Concession Agreement including consistency with the General Duty before deciding whether to approve or not the Specific Upgrade (or other upgrade as the case may be).

Question 7: Do you have any comments on the appropriateness of NR(HS)'s CP2 cost plans?

18. We note HS1 Ltd's assertion that there is a competitive market for O&M services (section 5.6.3). It would be helpful to be provided with information so we can understand the rationale for HS1 Ltd choosing to directly appoint NR(HS) in this case.

19. We are currently considering the extent to which NR(HS) is insulated from risk. Whilst we acknowledge that NR(HS) is on risk in the event that ORR determines a reduced level of OMRC, we are still awaiting clarification of whether NR(HS)'s management fee is at risk under the terms of the Operator Agreement. We have requested further supporting information in respect of the management fee proposed by NR(HS). Further comments on the NR(HS) management fee are detailed in response to question 14.

20. It would be helpful to understand the level of challenge HS1 Ltd has brought to the NR(HS) plan, and how it is satisfied that the proposal represents the optimum option. We would particularly like to understand the relationship between overall risk for NR(HS) and its likely overall profitability.

21. We have requested unit cost information for renewals and maintenance items of work. This should enable us to make some comparisons against the mainline railway.

Question 8: Please comment on the benchmarking work performed - and its application in the CP2 plans and usefulness in driving efficiency from CP3 onwards?

22. We note that one of the key issues emerging from the benchmarking analysis is that possessions are a constraint on the work programme. This is a comparably common problem and sets a challenge to maximise the output from the fixed amount of time available for maintenance.

23. The benchmarking identifies that HS1Ltd and NR(HS) have scope for improvement in the way in which this is managed. We would encourage consideration to be given to improving efficiency within the same possession opportunities, including learning any lessons from other infrastructure managers.

24. The benchmarking suggests that there is scope to reduce costs and headcount if a more innovative approach were adopted to the structure of NR(HS). It is not immediately apparent why the NR(HS) organisation needs to be the size it is and why any diseconomies have not been managed more rigorously. The Leigh Fisher report suggests

that there is more scope here through sub-contracting and sharing resources with Network Rail; the proposal does not appear to consider fully these opportunities.

25. In relation to track and signalling, a key finding of the benchmarking studies is that the density of switches and crossings is unusually high on the HS1 network. Whilst this increases cost significantly, we note that this increase is not captured in the efficiency gap as it is regarded as inherent. Whilst structural factors do impact the time period over which changes can be made, they are well inside the control of an infrastructure manager in the long-term. We note from the draft 5YAMS that this is something which HS1 Ltd intends to consider in the longer term. ORR welcomes this approach but would encourage HS1 Ltd to give early thought to the level of flexibility which the HS1 network requires. This should facilitate decisions on how a more affordable network with sufficient but not excessive capability could be delivered.

26. We consider that by CP3, HS1 Ltd's benchmarking needs to be more robust. Benchmarking efforts should be repeated during CP2, and extended to cover a wider range of comparators within a consistent framework. In order to ensure the robustness of econometric benchmarking in future years, the data set should include well defined and sufficiently easily comparable data points. ORR intends to monitor closely HS1 Ltd's benchmarking during CP2 and beyond, and will expect a high level of engagement from HS1 Ltd on future benchmarking work.

27. We consider that a clearer trajectory on how HS1 Ltd plans to close the identified efficiency gap would be useful. Both bottom-up and top-down benchmarking concluded on a significant efficiency gap. While the limited data sample does not allow for a detailed assessment in terms of exact percentages, the benchmarking shows a significant gap comparable to that seen for international infrastructure managers.

28. We note that no differentiation between frontier shift (the general improvement of efficiency in the industry) and catch-up (how HS1 Ltd overall looks to close the gap) is made. The benchmarking efforts in CP2 and later need to deliver a more clear differentiation of both trends to support a long term plan for improving efficiency.

29. The proposed reduction in costs of 20% costs is a continuation of the past successes in lowering costs. Furthermore, it should be part of a more long term program to drive down costs and challenge arrangements over future control periods. This begins with planning for CP2 and should extend to high level planning for CP3+.

Question 9: Do you have any comments on the appropriateness of HS1's CP2 cost plans?

30. We have analysed the cost plans to ensure that they are robust, deliverable and efficient and that they comply with the objectives as set out in the Concession Agreement. As a result of this analysis we have requested a number of further pieces of background analysis and clarification from HS1 Ltd, without which we will not be able to come to a conclusion on the appropriateness of HS1 Ltd's CP2 cost plans. In particular, further

details have been requested about HS1 Ltd's internal cost efficiency, including on staff costs and external consultancy cost forecasts.

Question 10: Do you have any comments on the appropriateness of pass through costs in CP2? Have we properly captured the options to reduce pass through costs in the remainder of CP1 and CP2? Would you consider a rates review within the next 12 months?

31. As a result of ongoing work to review the appropriateness of pass through costs in CP2 we have requested a number of pieces of background analysis and further clarification from HS1 Ltd. HS1 Ltd has recently supplied us with further information regarding their insurance policies, the UKPNS contract and their forecasts for non-traction electricity costs. Work is ongoing to review the appropriateness of pass through costs in CP2 in light of the further information supplied. Further comments on our assessments of traction and non-traction electricity costs are detailed in response to question 12.

32. HS1 Ltd's responsibilities for rates reviews are set out in the Concession Agreement. Paragraph 10A of section 2 of Schedule 10 states "*it is acknowledged and agreed that those elements of OMRC comprising Pass Through Costs and Traction Electricity Charges shall be reviewed and adjusted on an annual basis according to actual (rather than estimated) Pass Through Costs and Traction Electricity Charges for the preceding Year*". Accordingly, an annual adjustment for pass through costs is a requirement of the Concession Agreement and is subject to approval or determination by ORR.

Question 11: Please provide comments on the robustness of our freight cost forecasts. Are there any factors that we have not considered?

33. We are in the process of analysing HS1 Ltd's freight costs estimate to ensure it is both robust and efficient in terms of supporting freight traffic on the network. We have sought further information from HS1 Ltd to support its freight costs forecast; particular areas where we consider more information about costs is necessary include the Ripple Lane sidings and HS1 Ltd's freight assets mothballing costs. We are also awaiting further information from HS1 Ltd in respect of its charging structure with respect to freight. Whilst the charging structure does not impact on freight costs it does determine the level of freight costs directly recoverable from freight operators.

34. We note HS1 Ltd's proposal to apply the reopener provision for freight services in the event of "a material number of freight trains running to the North London Line connection rather than to Ripple Lane". It would be helpful to understand what number of freight trains is considered "material" for the purposes of undertaking a review of freight charges.

Question 12: Do you support the work we are doing on reducing traction and non-traction power costs? Are there any other opportunities which you believe we should be considering?

35. ORR supports initiatives to improve efficiency and reduce costs, and would urge HS1 Ltd to work collaboratively with its stakeholders to explore innovative methods to reduce

energy costs. We note the programme of work set out in the 5YAMS and will monitor the plans and commitments which HS1 Ltd is making in this area.

36. It should be noted that TOCs may move to On Train Metering during CP2 to provide them with greater visibility of operating costs and to enable the introduction of driver advisory systems. This approach is likely to require new billing systems and we would ask HS1 Ltd to be mindful of this.

37. System losses of up to 25% have been suggested by TOCs in stakeholder sessions. By way of comparison the mainline network quotes losses circa 5% for the OLE parts of the railway. We have asked HS1 Ltd to provide an analysis of the losses and share the findings with stakeholders.

Question 13: Does our CP2 renewals annuity proposal of £16.5m p.a. correctly balance affordability with meeting long term asset renewal obligations?

38. Section 3.1.3.3 of the draft 5YAMS states that there is a fixed price for maintenance with renewals treated on a case by case basis. Given that renewals on the HS1 network will become more significant beyond CP2, it would be helpful to understand what this means in practice, particularly how HS1 Ltd has satisfied itself that renewal works have been competitively procured (given that all renewals are to be contractually provided by NR(HS)).

39. HS1 Ltd's long term plans aim to cover the future spending requirements on the renewal of the asset base. This is based on the proposals in section 10. We cannot confirm this element until we review the basis of the 40 year asset plan and the associated whole lifecycle cost model. Our key considerations at this stage are:

- a) whilst HS1 Ltd have proposed a revised intervention regime, with different regimes for key assets that defer renewal interventions beyond manufacturers recommendations, we are concerned about the co-ordination of activities and whether this represents an appropriate level of whole lifecycle cost; and
- b) assets not covered by policy are adequately accounted for in the 40 year asset plan and the basis for their inclusion is reasonable and clearly understood.

40. We are reviewing the overall level of annuity proposed by HS1 Ltd to assess whether it is correctly set to meet long term asset renewal obligations.

41. ORR has questioned who bears the risk in relation to renewals spend and the escrow account. HS1 Ltd supplied a note to ORR on escrow arrangements and risk on 27 November 2013. We are developing a view on the conclusions within the paper, and will be responding to HS1 Ltd on this paper in due course.

Question 14: Do you agree with the assumptions/cost allocation in the financial model used to generate track access charges? If not, please provide an explanation.

42. Work is ongoing to review the assumptions and cost allocation in the HS1 Ltd financial model. Specific comments on the assumptions/costs allocation within the model are as set out below.

43. We note that HS1 Ltd has made provision within its work programme for the Financial Model to be independently reviewed in a cell-by-cell audit of formulas and consistency checks to ensure mathematical accuracy before the final 5YMAS is published. We consider this to be an essential part of the PR14 process.

44. Regarding the roll-over of costs and assumptions from CP1, it is apparent that a number of inputs to the model and stated assumptions within the CP2 model are replicated directly from those used within CP1. HS1 Ltd should ensure that all assumptions impacting on the determination of charges are reviewed as part of the PR14 process and based on the latest available information.

45. On the assumptions underlying Cost Apportionment percentages within 'Target OM costs', a large proportion of NR(HS) costs have been apportioned within the 'track dependent, traffic independent' category. However, 10.4% of these costs relate to 'Corporate Functions' which are unlikely to be wholly track length related and not necessarily avoidable if a specific class of operator ceased operating services as defined within the draft 5YAMS. HS1 Ltd is asked to provide information to support its approach.

46. Work is ongoing to review the level of management fee and risk premium costs, in particular to ensure that the costs of mitigating risks are not double-counted within insurance (other costs and pass through costs), other budget heads and the risk premium. All of the management fee and risk premium have been apportioned to the 'track dependent, traffic independent' category, whilst 10% of Operating Costs are apportioned to other categories. It would be helpful if HS1 Ltd could provide information to support this approach.

47. For calculation of the OMRC, a discount rate of 3.5% real has been used based on Government Green Book guidance. We have questioned whether this is the appropriate discount rate to be used.

48. Work is ongoing to review the appropriateness of the assumptions and operation of the Escrow account. Requests have been made to HS1 Ltd for additional information to support the parameters and approach used in operation of the account.

Split of costs between route, stations, unregulated activities

49. The split of costs detailed in table 4 of the 5YAMS is broadly consistent with information supplied to ORR in the cost allocation paper provided in September 2013; however there are some small differences. We would ask that HS1 Ltd confirm that the breakdown in table 4 is illustrative, and that the calculation of charges is based on the analysis undertaken for the cost allocation paper rather than the figures in table 4.

50. In the cost allocation paper, a small amount of staff costs were associated with freight. We would like clarification of whether or not this is included in the route total.

51. Based on the cost allocation paper the percentage of staff costs allocated to the route should be closer to 80%, as opposed to the 83% included in table 4. Can HS1 Ltd clarify whether this number should be closer to 80% or whether there are other costs included within the 83% that were not included in the cost allocation paper?

52. We would be grateful if HS1 Ltd could also explain the discrepancy between the cost allocation paper and table 4 of the 5YAMS on the technical / legal support costs associated with stations and the discrepancy between the cost allocation paper and table 4 of the 5YAMS on 'other' category costs associated with stations.

Question 15: Do you believe that an alternative to the CP1 freight supplement is required to support the continuation of freight traffic in CP2? If so, what is the right mechanism for this support?

53. ORR is aware that the discount which freight operators receive is due to expire at the end of CP1. The continuation (or cessation) and funding of this discount is a decision for HS1 Ltd (in accordance with the Railways Infrastructure (Access and Management) Regulations 2005) and DfT rather than ORR although we remain ready to contribute to these discussions if we can be of any assistance.

54. If the discount was to continue in CP2, ORR's view is that the mechanism for this support would need to be changed from the current mechanism which flows through franchised passenger operator contracts by virtue of the passenger access terms.

55. ORR's preference would be for a method of direct payment from DfT to HS1 Ltd to be adopted. A method whereby payments are made from DfT to freight operators, who pass this on in turn to HS1 Ltd, would also be acceptable.

Question 16: Do you agree with our proposal for each regulatory framework item?

56. HS1 Ltd's proposal to focus on the management of long delays and significant incidents seems sensible. HS1 Ltd should consider developing a KPI and publish its performance against it. This would demonstrate customer focus and would help balance the fact that the performance floors (whilst in place to inform enforcement, rather than performance) set a challenge which HS1 Ltd has historically met very easily.

Performance regime

57. We note that LSER has said it does not consider that HS1 Ltd has made a case for retaining existing payment rates in its pre-consultation. We do not consider HS1 Ltd has made a strong enough case in its draft 5YAMS either.

58. We agree with HS1 Ltd that there could be a reduction in the incentive properties of the performance regime if the performance thresholds are changed to be in line with those

calculated by AECOM. The reasons for this are that the 'neutral zone', representing levels of performance in which no payments are made, would be wider, and the HS1 good performance threshold would be impossible to reach, removing the incentive on HS1 Ltd to keep improving performance, even when it is already performing well.

59. However, we do not think these reasons provide a justification for not using any of the evidence from the AECOM work. We also do not think the other reasons HS1 Ltd has provided for not updating the performance regime, in particular the payment rates, are sufficiently compelling, in particular:

- a) we do not agree with HS1 Ltd that retaining the existing performance thresholds prevents the payment rates from being updated. The payment rates are not directly linked to the location of the performance thresholds. It is worth noting that it has not always been the case that the payment rates and benchmarks have been updated at the same time for the Schedule 8 performance regime used in relation to performance on Network Rail's infrastructure. For example in ORR's PR08 review of Schedule 8, we updated benchmarks but did not update the Network Rail payment rates, other than for inflation;
- b) we do not agree with HS1 Ltd that the 'neutral zone' being too wide is a good enough reason not to use the evidence from the AECOM work. Possible alternatives would be to reduce the number of standard deviations that inform the performance thresholds, or to remove the two major incidents that HS1 Ltd argue have resulted in the widening of the 'neutral zone'; and
- c) we are unclear on the rationale for not updating the performance regime payment rates because they are 'not significantly different from the existing payment rates'. The draft 5YAMS does not make clear the circumstances in which HS1 Ltd would have used the evidence from the AECOM work.

60. We note that the performance regime was not updated after the initial calibration using data for the year ending June 2011. This means that the performance thresholds, benchmarks and the LSER payment rate would remain based on simulated rather than actual data. It is not clear from the draft 5YAMS whether the payment rates are currently based on simulated or actual data. For the incentive properties of the performance regime to be as effective as possible, the payment rates should be based on the best available evidence of the impact of performance on fare revenue. Anything else could result in incentives that are either too strong or too weak to have the desirable effect on performance.

61. In light of the fact that not all parties agree that HS1 Ltd has provided sufficient justification of its proposed approach, we consider that HS1 Ltd should either:

- a) base the payment rates on the evidence from the work produced by AECOM but in a way which addresses the concerns HS1 Ltd has raised regarding using the AECOM thresholds; or

b) provide a stronger case for not using the evidence from the AECOM calibration to inform the payment rates.

62. We also have some specific comments relating to the detail in the draft 5YAMS:

a) on p117, it should be made clear whether the current payment rates are also based on simulated data;

b) on p118, it says that the PDFH 5.1 has not been finalised. This is incorrect. PDFH 5.1 was published in July 2013 and the final set of PDFH 5.1 GJT elasticities and late time multipliers was available by the end of March 2013. It is also not clear in the draft 5YAMS whether the payment rates calculated by AECOM were based on draft or final PDFH 5.1 GJT elasticities and late time multipliers. If the work carried out by AECOM is not based on the set of late time multipliers and GJT elasticities from the final version of PDFH 5.1, then the 5YAMS should set out the reasons for this, and an estimate of the implication on the size of the payment rate. Likewise, if the AECOM work is used, HS1 Ltd should also consider whether any adjustment should be made in relation to LSE commuter journeys in line with the adjustment we decided to make in relation to Network Rail payments under the Schedule 8 performance regime¹;

c) in Table 81, it is not clear whether the payment rates using the draft PDFH 5.1 are 50% of the MRE or 60% of the MRE;

d) it is not clear in the future proofing section on p119 the reason for introducing a requirement to recalibrate the performance regime using data from the first 12 months in which a new operator runs commercial services, or how this would be applied in practice given HS1 Ltd is proposing not to update the performance regime on the basis of the recent AECOM work and instead continue with it on the basis of simulated data; and

e) since the performance regime is not expected to be financially neutral in a given year, with HS1 Ltd being expected to make a net payment, it would add clarity to explain somewhere which elements of expected performance regime payments are funded via the risk premium, which are funded elsewhere and which are unfunded.

Question 17: Do you believe we have properly and completely identified the key risks?

¹ <http://www.rail-reg.gov.uk/pr13/PDF/london-commuter-flows-decision-2013-07-16.pdf>

63. On the basis of the information provided so far, ORR believes that the draft 5YAMS sufficiently captures both the inherent business risks and the specific plan delivery risks. We suggest that HS1 Ltd is also mindful of legislative and regulatory developments (particularly those generated in Europe) which may impact on HS1 Ltd's ability to deliver on its business and 5YAMS obligations.

Question 18: Overall do you believe that this 5YAMS plan when delivered is the right balance of affordability and asset stewardship and that it will support a safe, reliable and great customer experience railway?

64. ORR does not have anything further to add to the responses set out to the questions asked by HS1 Ltd, other than some more general comments below.

Question 19: What are the three most important issues for you within these plans?

65. ORR does not have anything further to add to the responses set out to the questions asked by HS1 Ltd, other than some more general comments below.

Other comments

66. As noted throughout our responses above, ORR still requires a number of documents from HS1 Ltd clarifying and expanding on details in the 5YAMS. The sharing of these documents, and the details within these documents, may prove critical to whether or not we can approve or reject the 5YAMS when it is submitted. We have shared with HS1 Ltd a list of the required documents.

67. As HS1 Ltd points out in its consultation, the 5YAMS must be submitted to ORR for approval or determination on or before 31 December 2013, in accordance with the terms of the Concession Agreement.

68. As part of this submission to ORR, we would expect to see full copies of all responses received to this consultation. We would also expect to see a redline or comparison version of the 5YAMS showing the differences between the consultation version of the draft 5YAMS and the final 5YAMS submitted to ORR. Accompanying this should be some form of table or other notation, demonstrating how consultee comments have been taken into account and the resulting changes or, where suggestions have not been adopted, the reasons for this.

69. As part of this submission, we would expect HS1 Ltd to submit the proposed drafting amendments to the Passenger Access Terms, Freight Access Terms, passenger and freight framework agreements and template agreements, the HS1 network statement, the HS1 network code and any other documentation modified as a result of the proposed 5YAMS. As HS1 Ltd notes in its draft 5YAMS, we would also expect to see redline versions of the same.

70. We note that HS1 Ltd says in the draft 5YAMS "By April 2014, ORR will approve the 5YAMS or advise that it is not consistent with our [HS1 Ltd's] general asset stewardship

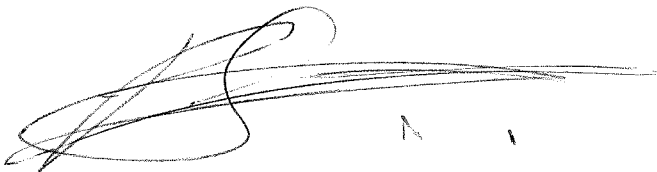
duty". We note and wish to clarify that the timescales for our approval or determination is dependent upon the date upon which ORR receives the final 5YAMS submission and relevant accompanying documentation. Additionally, pursuant to paragraph 8.2 of section 2 of Schedule 10 to the Concession Agreement, ORR has "90 Business Days (or such longer period as the ORR may reasonably specify) of receipt of the [5YAMS]...if, in the reasonable opinion of the ORR the [5YAMS] is consistent with HS1 Co's General Duty, the ORR shall approve the [5YAMS]". Should ORR require further time to approve the 5YAMS beyond 90 Business Days, we will write to HS1 Ltd and other interested parties as soon as reasonably practicable, setting out why and how much further time is required.

71. Paragraph 8.3 of section 2 to Schedule 10 of the Concession Agreement states "If the ORR reasonably determines that the [5YAMS] is not consistent with HS1 Co's General Duty, the ORR shall give reasons to HS1 Co explaining its decision and details of the deficiencies to be remedied". ORR expects any such notification to take place with the time limit specified in paragraph 8.2 of section 2 of Schedule 10 to the Concession Agreement (or such longer period as reasonably specified).

72. ORR is mindful of the requirements in the Passenger and Freight Access Terms in relation to implementation of the periodic review and will set out its approach to implementation in due course. We will continue to keep stakeholders informed of our timetable and progress following submission by HS1 Ltd of their 5YAMS.

73. I hope that this response is helpful. Please do not hesitate to contact me if you wish to discuss further any of the points raised above.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Paul Stone', written over a horizontal line.

Paul Stone

