# Consultation on the designation of Crossrail Central Operating Section (CCOS) as Specialised Infrastructure

Consultation Report, including response to issues raised



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# 1 Background

- 1.1 On 15<sup>th</sup> August 2016, Transport for London (TfL) launched a consultation in relation to its proposal to designate the Crossrail Central Operating Section (CCOS) as specialised infrastructure (the Consultation). It was noted that TfL has established a wholly-owned subsidiary, Rail for London (Infrastructure) Limited (RfL(I)) to be the infrastructure manager of the CCOS.
- 1.2 In the Consultation, TfL set out its view that the proposed designation of the CCOS as specialised infrastructure would enable the Crossrail project to securely deliver the benefits that the Sponsors and funders have paid for.
- 1.3 An infrastructure manager may, pursuant to regulation 25(2) of The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 (the 2016 Regulations), designate particular railway infrastructure for use by specified types of rail service and, once the infrastructure is so designated, may give priority to that specified type of rail service in the allocation of infrastructure capacity.
- 1.4 The Consultation noted that TfL considered it necessary to designate the CCOS as specialised infrastructure for use by high capacity metro passenger rail services.
- 1.5 Regulation 25(3)(b) of the 2016 Regulations requires an infrastructure manager to consult with the Secretary of State, the Office of Rail and Road (ORR) and other interested parties prior to making such a designation.
- 1.6 The Consultation concluded on 9<sup>th</sup> September 2016 and TfL received 15 responses from a variety of industry parties and interested individuals. This document sets out a summary of the responses received in relation to each of the consultation questions and TfL's conclusions thereon. This document is, necessarily, a summary of the responses received, although TfL would like to assure respondents that all comments have been carefully considered in reaching the conclusions set out in this document.

## 2 Responses to the Consultation

- 2.1 TfL received 6 consultation responses from industry parties as follows:
  - MTR Corporation (Crossrail) Limited
  - First Greater Western Limited
  - Network Rail Infrastructure Limited
  - Rail Freight Group
  - Rail Delivery Group
  - Department for Transport
- 2.2 A further 8 responses were received from interested individuals and 1 from a transport user group.
- 2.3 The ORR is the body to whom appeals can be made under regulation 32 of the 2016 Regulations and to whom a contested access application can be made under section 17 of the Railways Act 1993. It did not formally respond to the

consultation but, as noted in the Consultation, in its Regulatory Statement of November 2008 it stated that at that time it could see no reason in principle why it would object to such a designation<sup>1</sup>.

# 3 Response to issues raised

- 3.1 TfL would like to take this opportunity to thank all those who have considered and responded to the Consultation.
- 3.2 TfL has considered all of the points raised in those responses and a discussion of some of the key points raised, including those raised by more than one respondent, is set out below.

#### Question 1

Is there any reason why the North London Line and West London Line/South London Line cannot be available to provide alternative cross London routes for both passenger and freight services?

- 3.3 Respondents acknowledged that the North London Line and the West London Line/South London Line would continue to be alternative routes for cross London services, including freight traffic, for which the CCOS is unsuitable.
- 3.4 A number of respondents noted the increasing utilisation of these routes. This is ultimately a matter to be managed by Network Rail (NR) through its route planning and capacity allocation processes and does not prevent those routes being used as alternative cross London routes for both passenger and freight services.

#### Question 2

Are there any rail services that can only be operated on the CCOS (other than the proposed Crossrail services) that the designation of specialised infrastructure would prevent?

- 3.5 A number of respondents mentioned the provision for maintenance trains. TfL/RfL(I) acknowledge and agree with those respondents that appropriate provision will be required for the maintenance of the CCOS. The proposed designation would apply to the utilisation of capacity available after appropriate provision had been made for access to maintain the capability and performance of the CCOS infrastructure<sup>2</sup>.
- 3.6 Some respondents mentioned the possibility of future freight services through the CCOS. The designation would not preclude the operation of such services where capacity is available provided the service in question met the technical

<sup>1</sup> ORR Crossrail Regulatory Statement - <a href="http://orr.gov.uk/">http://orr.gov.uk/</a> data/assets/pdf file/0017/10745/crossrail-reg-statmnt-131108.pdf

<sup>&</sup>lt;sup>2</sup> The relevant allowances for maintenance of the CCOS will be determined through the annual consultation on the CCOS Engineering Access Statement, as will be set out in the CCOS Network Code. TfL/RfL(I) currently expect that this process will be similar to the Network Rail process, whereby the engineering access statement and maintenance allowance is agreed in advance of the timetable development process. Therefore available capacity will have taken into account maintenance requirements.

- and operational requirements for the CCOS. TfL/RfL(I) note that the CCOS infrastructure is not suitable for conventional freight traffic.
- 3.7 Similarly the designation would not preclude through services with no or limited station calls, where capacity is available<sup>3</sup>.
- 3.8 One respondent queried how the proposed designation would affect the availability of the CCOS infrastructure in the event of perturbation on the NR network (with specific reference to the Westbourne Park Train Reversing Facility). TfL/RfL note that the specialised infrastructure designation covers how it will allocate capacity (and the relative priorities it can afford to different types of service). This will be as part of the timetabling process and the criteria which RfL(I) can take into account when making decisions on capacity allocation. The availability of the CCOS infrastructure for an on the day emergency on the NR network will be set out in the CCOS Emergency Access Code<sup>4</sup>.

#### Question 3

Are there any ways that consultees can see that the Crossrail project could deliver securely to the Sponsors and funders the benefits that they have paid for without the designation of the CCOS as specialised infrastructure?

#### Question 4

Are there any ways that consultees can see that the Crossrail contribution to the Mayor's Transport Strategy could be securely delivered without the designation of the CCOS as specialised infrastructure?

- 3.9 NR noted in its response the protection afforded by the Crossrail Track Access Option in relation to the Crossrail Project granted by NR to TfL<sup>5</sup>.
- 3.10 TfL recognises that all services on the CCOS (including those operating only on the CCOS) will require access in some form to the NR network and that a significant amount of the capacity currently available to access the CCOS is reserved by the Crossrail Track Access Option.
- 3.11 TfL considers that the Crossrail Track Access Option does not provide all of the necessary protection such that the envisaged benefits / contribution of the Crossrail project will be securely delivered because:
  - the track access option is for a fixed duration of 30 years (the Crossrail Business Case is for a period of 60 years);
  - there may be capacity enhancements on the NR routes adjoining the CCOS over the life of the track access option creating more opportunities for access to the CCOS;

<sup>&</sup>lt;sup>3</sup> Subject to type of traffic and Rolling Stock meeting the requirements set out in the CCOS Network Statement, which will shortly be the subject of a further TfL consultation process.

<sup>&</sup>lt;sup>4</sup> The CCOS Emergency Access Code will be consulted on as part of a future consultation on the CCOS Network Code early next year.

<sup>&</sup>lt;sup>5</sup> The Track Access Option was granted by NR to the Secretary of State for Transport on 22<sup>nd</sup> September 2008 and novated to TfL on 2<sup>nd</sup> September 2014 http://orr.gov.uk/ data/assets/pdf file/0003/14844/crossrail-track-access-option-restated.pdf

- it does not reserve all the paths on the NR network required to provide the service level commitment within the concession let by Rail for London Limited (a subsidiary of TfL) to run high capacity metro passenger rail services through the CCOS; and
- one of the Sponsors' objectives was to secure long term access rights to the CCOS, this being acknowledged in the ORR's Regulatory Statement of November 2008<sup>6</sup>. For access contracts to be granted in excess of 15 years, the 2016 Regulations require the infrastructure to which such rights are sought to be not only the result of substantial and long-term investment supported by contractual commitments including a multi annual amortisation plan, conditions that the Sponsors considers the CCOS satisfies, but also for the infrastructure to be designated specialised.

TfL therefore considers that it would be preferable to designate the CCOS as specialised infrastructure to ensure the envisaged benefits are achieved.

- 3.12 Two respondents suggested the necessary protection could be afforded by exemption from the requirement to grant third party access to the CCOS infrastructure (i.e. being granted an exemption from sections 17 and 18 of the Railways Act 1993).
- 3.13 TfL agrees that this would be an alternative option and did investigate this possibility prior to the commencement of the Crossrail project. The Secretary of State for Transport, however, decided as a matter of policy not to grant an exemption in relation to the CCOS. As a consequence the possibility of the CCOS falling within one of the scope exclusions in Article 1(3) of 2001-14-EC transcribed into UK legislation as Regulation 4(4) of The Railways Infrastructure (Access and Management) Regulations 2005<sup>8</sup> was not tested.
- 3.14 Some respondents noted that the capacity for other (i.e. non high capacity metro passenger rail) services was likely to be small.
- 3.15 It should be noted that no access has been granted to date to the CCOS; however a number of contracts have been entered into by TfL namely:
  - the Crossrail Track Access Option with NR; and
  - the concession let by Rail for London Limited (RfL, a subsidiary of TfL) to MTR Corporation (Crossrail) Ltd (MTRCCL) to run services on the Crossrail route (including the CCOS).

that are predicated on a level of high capacity metro passenger rail services through the CCOS and would thus be supported by the proposed designation.

3.16 Further there is capacity that is not utilised in the above contracts in the off peak period. Such capacity could be made available by removing the even service interval between the MTRCCL services. TfL believes priority should be given in

<sup>&</sup>lt;sup>6</sup> As per footnote 1 <sup>7</sup> Regulations 21(9) and 21(10) of the 2016 Regulations

<sup>&</sup>lt;sup>8</sup> Corresponding provisions now in Article 1(3) of 2012-34-EU and Regulation 4(7) of the 2016 Regulations, which are substantially the same in nature. TfL therefore considers that the same position would apply under the 2016 Regulations.

the allocation of capacity so created to proposals for high capacity metro passenger rail services so that there are even service intervals which is in the interests of passengers. Any competing alternative uses leading to uneven service intervals could lead to overcrowding on MTRCCL services and at stations within the CCOS. To avoid these risks, giving priority to high capacity metro passenger rail services is considered to be a sensible measure.

- 3.17 Some respondents suggested charging appropriate access fees as a means of ensuring the envisaged benefits are delivered. The access charging framework will be established by the ORR and the level of access fee will not of itself necessarily determine how the available CCOS capacity is utilised. Access charges must be levied in accordance with the principles set out in the 2016 Regulations; therefore it may not be possible to have different access charges for certain types of service to manage capacity and ensure the envisaged benefits are delivered.
- 3.18 NR noted the need for flexibility in capacity planning on UK rail network and that it was seeking greater flexibility in the specification of rights in access contracts for its network. TfL considers that potential operators of headway based metro services on the CCOS will seek specification of an approximately even service interval. It is currently envisaged that the designation of the CCOS as specialised infrastructure will allow contracts for access to the CCOS to specify the capacity characteristics, including service interval, to be provided to the applicant for the duration of the access agreement.
- 3.19 One respondent stated that the proposed designation should not constrain NR's ability to timetable services on its network. As the proposed designation does not extend to the NR network, this cannot be so. NR will still be required to use its skill and expertise in applying its processes to turn requests for capacity on its network (including those of RfL's concession operator to support a high capacity metro passenger rail service on the CCOS) into a working timetable as it would in the absence of such a designation.

# 4 Consultee feedback on Consultation documents and process

- 4.1 Those industry consultees who gave feedback stated that the documentation was clear, simple, well explained and with appropriate questions.
- 4.2 More generally there were mixed responses to the contents of the documentation. Some respondents indicated it was very clear and easy to understand. Other respondents felt the documentation could have provided more detail and been easier for those with limited technical and legal knowledge. TfL will endeavour to ensure that the contents of each future consultation are clear and understandable in a reasonable and proportionate way, noting that the primary audience for the Consultation (and for future CCOS consultations) is existing or prospective railway industry participants. However, TfL welcomes comments from all interested parties, although a basic understanding of the railway legislative, regulatory and technical framework will need to be assumed.

4.3 NR noted the 25 day period might be considered too short. TfL sets the length of the consultation period in light of the complexity of the issues and the volume of information that needs to be considered. It was felt that this period was appropriate for a short consultation document on one specific issue with a limited number of questions. A number of planned future CCOS related consultations will have considerably longer consultation periods given the nature and complexity of the issues involved, together with the expected volume of documentation.

# 5 Next steps

- 5.1 Having considered all of the responses to the Consultation, TfL considers that no issues have been raised which would preclude the CCOS from being designated as specialised infrastructure for use by high capacity metro passenger rail services.
- 5.2 TfL and RfL(I) therefore designate the CCOS as specialised infrastructure for use by high capacity metro passenger railway services with immediate effect.
- 5.3 In relation to parts of the CCOS which are currently owned by NR and which it is intended to grant RfL(I) a property interest in, this designation is subject to obtaining the relevant property interest.