

The Pilbara Infrastructure Pty Ltd

Draft Determination on the
Proposed (Revised) Train Management
Guidelines

April 2009

Economic Regulation Authority



WESTERN AUSTRALIA

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DRAFT DETERMINATION

1. The Pilbara Infrastructure Pty Ltd (**TPI**), a wholly owned subsidiary of Fortescue Metals Group (**FMG**) is the owner of a recently constructed railway (**TPI Railway**) connecting FMG's Cloud Break iron ore mine in the Pilbara to TPI's port facilities at Port Hedland.
2. On 1 July 2008, the TPI Railway was included in the State's rail access regime (consisting of the *Railways (Access) Act 1998* (**Act**) and the *Railways (access) Code 2000* (**Code**)) through proclamation of Part 3 of the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* (**Agreement Act**).
3. On 3 July 2008, TPI submitted its proposed Train Management Guidelines (**TMG**) to the Economic Regulation Authority (**Authority**) for approval, in accordance with Part 5, section 43(3) of the Code. The Agreement Act required TPI to submit its proposed TMG to the Authority no later than seven days after the TPI Railway became subject to the State's rail access regime.
4. TPI submitted a revised proposed TMG on 27 February 2009. This revised proposed TMG is the TMG referred to in this draft determination as TPI's proposed (revised) TMG.
5. The Authority's approval is required, pursuant to section 43(2) of the Code, before TPI can put in place its TMG.
6. The Authority has considered TPI's proposed (revised) TMG in conjunction with comments made in submissions to the Authority by interested parties, including a supplementary submission received from TPI addressing issues raised in interested parties submissions.
7. Following consideration of the requirements set out under section 41 of the Code, the draft determination of the Authority is to approve TPI's proposed (revised) TMG, subject to 20 amendments. These amendments are listed below.

LIST OF AMENDMENTS

Amendment 1

TPI's proposed (revised) TMG should be amended by deleting all references to TPI's port, its port access regime and its supply chain.

Amendment 2

Section 1.1 (headed 'Background') of TPI's proposed (revised) TMG should be amended by deleting the last dot point paragraph and inserting the words "that performance as it relates to requirements imposed on the railway owner by or under the *Railways (Access) Act 1998* (the Act) or the *Railways (Access) Code 2000* (the Code)".

Amendment 3

Section 1.2 (headed 'Purpose of the TMG') of TPI's proposed (revised) TMG should be amended as follows:

- Amend the first dot point statement from “ensure that TPI’s contractual obligations are fulfilled” to “ensure that TPI’s contractual obligations to any operator using TPI’s Railway Network are fulfilled”.
- Amend the second dot point statement from “maximise the efficient utilisation of that Network, within the context of the overall supply chain” to “maximise the efficient utilisation of TPI’s Railway Network”.
- Add the statement “provide for the safe and reliable use of TPI’s railway Network” as an additional dot point.

Amendment 4

Section 2.1 (headed ‘Master Train Plan’) of TPI’s proposed (revised) TMG should be amended as follows:

- Provide a more clear definition of ‘Master Train Plan’
- Specify the time period covered by the Master Train Plan (for example whether it covers 12 months or some other period).
- Amend “Cyclic Traffics” to “Cyclic Traffic”.
- Delete “per week” under the first paragraph on page 5 and replace with “within a particular period of time”.
- Delete the three paragraphs describing the ‘Ad hoc Service’ as outlined under (c) on page 5.
- Delete the second last paragraph under this section on page 6 (this paragraph commences “At all times...”).

Amendment 5

Section 2.2 (headed ‘Weekly Train Plan’) of TPI’s proposed (revised) TMG should be amended as follows:

- Delete the third sentence of the first paragraph.
- Revise this section to change the Weekly Train Plan to a Fortnightly Train Plan.
- Incorporate in this section, or elsewhere under section 2, appropriate arrangements to establish a three monthly preliminary train plan (or similar) covering the three month period beyond the fortnightly train plan.
- Set out clearly a process for operators to be involved in the preparation and finalisation of the fortnightly train plan and the three monthly preliminary train plan (or similar) following TPI’s receipt of operators’ train path requests for these periods.
- Delete the last paragraph under this section (this paragraph commences “At all times...”).

Amendment 6

Section 2.3 (headed ‘Contested Train Path’) of TPI’s proposed (revised) TMG should be amended as follows:

- Delete part (a).
- Include under part (c) a statement to the effect that TPI will ensure that affected operators are provided with as much relevant train path information as possible in order to facilitate the ability of operators to reach agreement between themselves consistent with the objectives of (c).

- Revise parts (d) and (e) by setting out the processes under these parts more precisely and clearly.
- Include under part (e) clear statements of the process and the specific criteria to be applied by the Manager, Train Control and Scheduling, in making a determination under (e).
- The term “Manager Train Control and Scheduling” should be defined.
- Include a statement at the end of this section noting that whenever TPI makes an allocation decision on a contested train path, at whichever of the above stages in the process this occurs, the decision and associated reasons will be recorded in a register by TPI and each affected operator will be provided with a copy of this information. A copy of this information will also be provided to the Authority on request.

Amendment 7

Section 3.1 (headed ‘Services presented on time, late or early’) of TPI’s proposed (revised) TMG should be amended as follows:

- Delete the second sentence of the first paragraph under 3.1.2 and replace with “TPI will use its best endeavours to accommodate a service which is running early or which is presented at the point of entry to the Network more than 15 minutes early by providing a train path for that service at TPI’s first available opportunity in accordance with the general principles of train management in the Decision-Making Matrix”.
- Delete the words “TPI will use reasonable endeavours” in the second paragraph under 3.1.2 and replace with “TPI will use its best endeavours”.
- Delete the fourth paragraph under 3.1.3 and replace with “TPI will use its best endeavours to accommodate a service which is running late or which is presented at the point of entry to the Network late by providing a train path for that service at TPI’s first available opportunity in accordance with the general principles of train management in the Decision-Making Matrix”.
- Delete the words “TPI will use reasonable endeavours” in the fifth paragraph under 3.1.3 and replace with “TPI will use its best endeavours”.

Amendment 8

Section 3.2 (headed ‘Instructions’) of TPI’s proposed (revised) TMG should be amended as follows:

- Under the heading ‘In issuing such instructions TPI will:’ on page 13, amend the paragraphs as follows:
 - part (a): Delete “endeavour” and replace with “use its best endeavours”.
 - part (b): Delete “endeavour” and replace with “use its best endeavours”.
 - Add a new part (e) stating: “where a variation to a Train Path is to be temporary, the duration of the temporary Train Path will be consistent with the duration of the Instruction issued”.
- Include a new paragraph as the second last paragraph on page 13, stating: “Unless the Train Control Centre gives an instruction that is a Train Control Direction, the Operator need only comply with an Instruction if it was given a reasonable time before the required time for compliance. Where an Instruction is unreasonable or impractical, for operating and cost reasons, the Operator may decline to run the service without penalty to its Service Level Performance Record”.

- Include a new sentence as the second sentence in the last paragraph on page 13, stating: “The Operator is not responsible for any delay suffered or cost incurred by TPI in the Operator complying with a proper Instruction of TPI and TPI releases the Operator from any such claim arising from such compliance”.
- Delete the words “an Instruction” in the second line of the final paragraph on page 13 and replace with “a proper Instruction”.
- Define the terms “Network Rules” and “Service Level Performance Record”.

Amendment 9

Section 4.1 (headed ‘Network repairs, maintenance and upgrades’) of TPI’s proposed (revised) TMG should be amended as follows:

- Delete the words “use reasonable endeavours to” under part (b) of section 4.1.1 (third paragraph) and replace with “at all times”.
- Delete the word “reasonable” under part (c) of section 4.1.1 and replace with “its best”.
- Insert a new paragraph at the end of section 4.1.1 which states: “TPI acknowledges that section 34A of the *Railways (Access) Act 1998* provides the ERA with powers should it believe that TPI’s conduct would be construed as hindering or preventing an Operator’s access to TPI’s railway network”.
- Delete the words under part (d)(i) of section 4.1.2 and replace with “it will give a minimum of two weeks notice to affected Operators”.
- Delete the words “give as much notice as is reasonably practical and in doing so will endeavour to provide at least three months notice” under part (e) of section 4.1.2 and replace with “at least six months notice”.
- Insert an additional sentence at the end of the paragraph under part (e) of section 4.1.2, as follows: “TPI will publish this notice on its web site on the date it is issued to affected Operators”.
- Insert a new paragraph (part (g)) at the end of section 4.1.2, as follows: “ g) any notice given under this policy will describe:
 - (i) the extent and nature of the works,
 - (ii) the potential effect on Train Paths, and
 - (iii) what alternative arrangements are proposed.”

Amendment 10

Section 4.2 (headed ‘Management of emergencies or other incidents’) of TPI’s proposed (revised) TMG should be amended as follows:

- Replace the second paragraph under 4.2.1 (beginning “TPI may request...”) with wording similar to that in the second and third paragraphs of section 2.2 of WNR’s 2006 TMG.
- Amend the last sentence in the first paragraph under 4.2.1 as follows: “...consideration may also be given, in consultation with the Operator of the failed train, to:”

Amendment 11

Section 4.3 (headed ‘Train activities following an incident or an emergency’) of TPI’s proposed (revised) TMG should be amended by continuing the sentence comprising this paragraph as follows:

“... causing the delay if practical, subject to consultation with Operators as to their positions and needs including factors such as crewing arrangements, sensitive freight and shipping or production requirements.”

Amendment 12

Section 4.4 (headed ‘Management of issues affecting daily operations’) of TPI’s proposed (revised) TMG should be amended by continuing the sentence comprising the last paragraph on page 16, as follows:

“TPI will maintain the Network (but only in so far as the Network is relevant to the Operator’s Train Paths) to the highest level consistent with its obligations under Access Agreements or the requirements on TPI under the *Rail Safety Act 1998*.”

Amendment 13

Section 4.5 (headed ‘Disputes’) of TPI’s proposed (revised) TMG should be amended to be equivalent to the process described under section 4.2 of TPI’s proposed (revised) TPP as amended under Recommendation 9 of the Authority’s Draft Determination on TPI’s proposed (revised) TPP.

Amendment 14

Appendix A (headed ‘Definitions’) of TPI’s proposed (revised) TMG should be amended as follows:

- Include a complete list of all the terms used in the TMG which might reasonably be expected to require a definition.
- All definitions should:
 - Be consistent with the definitions in the Act and the Code.
 - If not defined in the Act and the Code be consistent with the definitions under section 7 of WNR’s 2006 TMG where appropriate.
 - Where the same term has been used and defined in TPI’s proposed (revised) TPP the TMG should use the same definition subject to any relevant required amendments under the Authority’s Draft Determination on TPI’s proposed (revised) TPP.

Amendment 15

Appendix B (headed ‘Decision –Making Matrix’) of TPI’s proposed (revised) TMG should be amended as follows:

- Insert two new paragraphs at the end of the section on Appendix B on page 26 as follows:
 - The first new paragraph should be the same as the third paragraph under section 3.3 of WNR’s 2006 TMG on page 7 except that ‘Access Manager’ should be replaced with ‘Manager, Train Control and Scheduling’.
 - The second new paragraph should be the same as the last paragraph under section 3.3 of WNR’s 2006 TMG on page 10 (part(vi)) except that ‘Access Manager’ should be replaced with ‘Manager, Train Control and Scheduling’.

- Insert the four paragraphs at the top of the matrix on page 9 of WNR's 2006 TMG (under the heading 'General Principles for Train Management') into the top of the matrix on page 27 under the same heading.
- Delete the words " Priority may be dictated to either service depending on instructions received by the Train Controller from the Port (acting to maximise the efficiency of the supply chain as a whole). In the absence of such a direction" in Rules 2, 3 and 4 on page 27.
- Add a new part (1) under the heading 'Notes' at the bottom of page 27 equivalent to part (1) of section 3.3 of WNR's 2006 TMG under the "Notes' heading at the bottom of page 9.

Amendment 16

TPI's proposed (revised) TMG should be amended as follows:

- Include a new section (section 4.6) headed 'Performance Monitoring (KPIs)'
- Outline arrangements under this new section 4.6, for the manner in which TPI will agree with operators on Key Performance Indicators (KPIs) to be included in access agreements. These arrangements should be similar to those set out under section 4 of WNR's 2006 TMG commencing from the beginning of the seventh paragraph (which starts with "No later than ...") on page 13 to the end of section 4.

Amendment 17

TPI's proposed (revised) TMG should be amended as follows:

- Include a new section (section 4.7) headed 'Protocols for Consultation with Operators'
- Outline arrangements under this new section 4.7, for the manner in which TPI will agree on the arrangements for consultation protocols with operators. These arrangements should be similar to those set out under section 2.4 of WNR's 2006 TMG.

Amendment 18

TPI's proposed (revised) TMG should be amended as follows:

- Include a new section (section 4.8) headed 'Consistency between Access Agreements and the TMG'
- Outline arrangements under this new section 4.7, for the manner in which TPI will ensure consistency between its access agreements under the Code and its TMG. These arrangements should be similar to those set out under section 7 of WNR's 2006 TPP.

Amendment 19

TPI's proposed (revised) TMG should be amended as follows:

- Include a new section (section 4.9) headed 'Compliance and Review'
- Outline arrangements under this new section 4.9, for the manner in which TPI's compliance with its TMG will be monitored by the Authority and the review interval for TPI's TMG. These arrangements should be similar to those set out under section 5 of WNR's 2006 TMG with the exception of the following:
 - First paragraph of WNR's section 5: Delete this paragraph and replace with "The ERA will review the TMG, through a public consultation process, two years after the date when all the regulatory instruments required under the Act and the

Code for TPI's railway have been approved by the Authority. TPI will provide the Authority with a proposed revised TMG at the time the review is required to commence the review process"

- Fourth and fifth paragraphs of WNR's section 5: Delete these paragraphs.
- Sixth paragraph of WNR's section 5: Delete this paragraph and replace with "The ERA will monitor TPI's compliance with the TMG through an audit of TPI's obligations under the TMG every two years. This audit will be carried out by an independent auditor approved by the ERA, with TPI managing and funding the audit. The scope of the audit will be determined by the ERA. The final audit report will be provided to the ERA and the ERA will publish this report on its web site (excluding confidential information, if any)."

Amendment 20

TPI's proposed (revised) TMG should be amended as follows:

- Include a new section (section 5) headed 'Control and Management of Access to the Network'
- Outline arrangements under this new section 5, for the manner in which TPI will set out the obligations and warranties which will apply to TPI and operators in relation to access to the network. These arrangements should be similar to those set out under section 6 of WNR's 2006 TMG (pages 15 to 18).

REASONS FOR THE DRAFT DETERMINATION

BACKGROUND

8. The TPI Railway was commissioned in May 2008. This railway is about 260 kilometres in length and runs from FMG's Cloud Break iron ore mine in the Chichester Ranges (East Pilbara) to TPI's port facilities at Anderson Point in Port Hedland.
9. On 1 July 2008, the TPI Railway became subject to the Act and the Code through the proclamation of Part 3 of the Agreement Act. TPI was required, from this date, to comply with the legislative obligations set out for railway owners under the Act and the Code.
10. The TPI Railway is owned and operated by TPI. TPI will perform both access-related rail functions and functions associated with the operation of train services.
11. The TMG is one of the four Part 5 Instruments set out in Section 40(3) of the Code. Section 40(2) of the Code notes that the Part 5 Instruments are binding on the railway owner.
12. Associated with the TMG is the Train Path Policy (**TPP**). The TPP is the statement of policy relating to the allocation of train paths and the provision of access to train paths that have ceased to be used. TPI's proposed TPP document is the subject of a separate determination by the Authority.
13. In making this draft determination, the Authority is mindful of the legislative requirements of the *Rail Safety Act 1998* (**Safety Act**) to which TPI's TMG is required, under the Agreement Act, to comply. Pursuant to section 8 of the Act, TPI's TMG cannot contain any provision which is contrary to or inconsistent with the Safety Act.

LEGISLATIVE REQUIREMENTS

14. The key areas of the Code and the Act that have relevance to the formulation and application of the TMG are as follows:

Code Requirements

43. Railway Owner to comply with approved train management guidelines
 - (1) Subsection (2) applies to the railway owner in relation to a part of the railways network and associated infrastructure to which this Code applies when that owner is performing its functions in relation to that part..
 - (2) The railway owner is to comply with the train management guidelines for the time being approved or determined by the Regulator under this section.
 - (3) As soon as is practicable after the commencement of this Code the railway owner is to prepare and submit to the Regulator a statement of the principles, rules and practices (the train management guidelines) that are to be applied and followed by the railway owner -
 - (a) in the performance of the functions referred to in subsection (1); but

- (b) only so far as that performance relates to requirements imposed on the railway owner by or under the Act or this Code.
- (4) The Regulator may –
 - (a) approve the statement submitted by the railway owner either with or without amendments; or
 - (b) if he or she is not willing to do so, determine what are to constitute the train management guidelines.,
- (5) The train management guidelines may be amended or replaced by the railway owner with the approval of the Regulator.
- (6) The Regulator may, by written notice, direct the railway owner -
 - (a) to amend the train management guidelines; or
 - (b) to replace them with other train management guidelines determined by the Regulator,
 and the railway owner must comply with such a notice.

Act Requirements

20(4) Functions of the Regulator

In performing functions under the Act or Code, the Regulator is to take into account —

- (a) the railway owner's legitimate business interests and investment in the railway infrastructure;
 - (b) the railway owner's costs of providing access, including any costs of extending or expanding the railway infrastructure, but not including costs associated with losses arising from increased competition in upstream or downstream markets;
 - (c) the economic value to the railway owner of any additional investment that a person seeking access or the railway owner has agreed to undertake;
 - (d) the interests of all persons holding contracts for the use of the railway infrastructure;
 - (e) firm and binding contractual obligations of the railway owner and any other person already using the railway infrastructure;
 - (f) the operational and technical requirements necessary for the safe and reliable use of the railway infrastructure;
 - (g) the economically efficient use of the railway infrastructure; and
 - (h) the benefits to the public from having competitive markets.
15. In exercising its decision-making power pursuant to section 43 of the Code, the Authority is required to take into account the factors listed in section 20(4) of the Act. However, the Authority may allocate such weight to each of the factors listed in section 20(4) as it considers appropriate in order to ensure a balancing of interests in relation to the railway owner, rail operators, access seekers and the public.

PUBLIC CONSULTATION

16. The Code, under section 45, requires the Authority to undertake public consultation prior to approving any TMG statement prepared by a railway owner pursuant to section 43 of the Code.

17. On 14 July 2008, the Authority issued a notice on its web site and in relevant newspapers calling for submissions from interested parties on TPI's proposed TMG by 26 August 2008. Five public submissions were received, from:
 - The Australian Rail Track Corporation Ltd.
 - Hancock Prospecting Pty Ltd.
 - North West Iron Ore Alliance
 - United Minerals Corporation NL.
 - Yilgarn Infrastructure Ltd.
18. On 19 September 2008, TPI requested the Authority's agreement to make a supplementary submission addressing some issues raised in the public submissions. This agreement was provided and TPI's supplementary submission was received by the Authority on 15 October 2008.
19. The five submissions from interested parties and TPI's supplementary submission are available on the Authority's website (www.era.wa.gov.au).
20. On 27 February 2009 TPI submitted a revised proposed TMG noting that changes had been made to section 1.3. The Authority issued a notice calling for public submissions on these changes to TPI's proposed TMG by 19 March 2009. No submissions were received.
21. This revised proposed TMG is referred to as the proposed (revised) TMG in the discussion below.
22. In the discussion below, the names of the parties who made public submissions have been abbreviated. The North West Iron Ore Alliance is the **NWIOA**. United Minerals Corporation is **UMC**. The Australian Rail Track Corporation is the **ARTC**. Yilgarn Infrastructure is **Yilgarn**. Hancock Prospecting submitted two consultants reports on its behalf, from ACIL Tasman and GHD. In the case of the ACIL Tasman report, this is referred to as **Hancock (ACIL)** and the GHD report is referred to as **Hancock (GHD)**.

CONSULTANTS USED BY THE AUTHORITY

23. To assist the Authority in the preparation of its draft determination, the Authority engaged a consultant, Price Waterhouse Coopers (**PwC**) to review TPI's proposed TMG and the public submissions and provide advice to the Authority. The PwC draft report is available on the Authority's website (www.era.wa.gov.au).

SCOPE OF MATTERS COVERED UNDER THE DRAFT DETERMINATION

24. The draft determination deals with the matters to be included in a railway owner's TMG as set out under Part 5, section 43 of the Code.
25. Some comments made in the public submissions are outside the scope of matters dealt with under the above section of the Code and, consequently, have not been included in the discussion of relevant issues set out in this draft determination.

26. Yilgarn provided, by way of a submission, a document which it had submitted to the National Competition Council in 2005, entitled “A case for avoiding vertically integrated rail infrastructure in ‘greenfield’ mining regions”. The comments contained therein were not considered to be within the scope of this determination as these comments did not address the proposed TMG submitted to the Authority by TPI.

DISCUSSION OF ISSUES

27. TPI has set out its proposed (revised) TMG in four parts. Each of these parts is discussed under the headings listed below, which coincide with the section headings in the TPI’s proposed (revised) TMG.
- Introduction: Background (Section 1.1)
 - Introduction: Purpose of the TMG (Section 1.2)
 - Introduction: Pre-conditions (Section 1.3).
 - Scheduling Principles: Master Train Plan (Section 2.1).
 - Scheduling Principles: Weekly Train Plan (Section 2.2).
 - Scheduling Principles: Contested Train Path (Section 2.3).
 - Real-time Management of Services: Services presented on time, late or early (Section 3.1).
 - Real-time Management of Services: Instructions (Section 3.2).
 - Managing Infrastructure Issues: Network repairs, maintenance and upgrades (Section 4.1).
 - Managing Infrastructure Issues: Management of emergencies or other incidents (Section 4.2).
 - Managing Infrastructure Issues: Train activities following an incident or an emergency (Section 4.3).
 - Managing Infrastructure Issues: Management of issues affecting daily operations (Section 4.4).
 - Managing Infrastructure Issues: Disputes (Section 4.5).
28. The discussion of each item under the above headings is undertaken in the following order:
- a) A summary of TPI proposals relating to that item.
 - b) An outline of comments received in the public consultation process which relate to that item, including any comments provided by TPI in its supplementary submission.
 - c) PwC’s advice in relation to the TPI proposal, the public submission comments received and comments in TPI’s supplementary submission.
 - d) The Authority’s assessment.
 - e) Any amendments required.
29. It should be noted that reference has been made in the discussion below to WestNet Rail’s (**WNR**) TMG as approved by the Authority in August 2006. WNR’s 2006 TMG is available on the Authority’s web site (www.era.gov.au).

30. It should be noted that in the discussion below, TPI's proposed (revised) TMG is referred to as TPI's TMG.

Introduction: Background (Section 1.1)

TPI's Proposal

31. Relevant background information was provided by TPI, on its corporate structure and railway network.
32. TPI indicated that it has developed separate access regimes to enable third party access to the rail network and the port terminal.
33. An outline was provided by TPI on the obligation on railway owners, as set out under the Code, for preparing and submitting the TMG.

Public Submissions

34. The NWIOA (page 6) commented that references to TPI's port access regime should be removed, noting that:

While the nature of the draft TMG and TPP documents expose some of the key concepts for the Rail Access Regime there is no such visibility on the Port Access Regime. The Alliance has concerns that the TMG and the TPP documents link the rail access regime to the port access regime ... all references to non-rail entities and roles, but particularly the Port, should be removed from the TPI Rail Access regime and TMG, TPP documents.
35. Hancock (GHD) (page 3) also expressed concerns over TPI's linkage between its rail and port objectives and operations.

Pricewaterhouse Cooper's (PwC) Advice

36. PwC advised that TPI's linking of the objectives and operation of the rail access regime with the objectives and operations of its port is inconsistent with the requirements of the rail access legislation (the Act and the Code).
37. PwC recommended that TPI's TMG should only address its railway and make no reference to the broader TPI/FMG supply chain (which includes its port) or to joint objectives in relation to that supply chain.
38. PwC also noted that the second dot point in the last paragraph of this section of TPI's TMG excluded reference to the Code which is inconsistent with the requirements of section 43(3)(b) of the Code.
39. PwC recommended that the above dot point be amended to include reference both to the Act and the Code.

Authority's Assessment

40. The Authority notes, firstly, that the TMG relates only to that part of the railway owner's rail network which falls under the rail access regime as set out under Schedule 1 of the Code and, secondly, that the content of the TMG should focus on satisfying the information requirements set out under section 43 of the Code.

41. Based on the above, the Authority's view is similar to that expressed by the NWIOA and Hancock (GHD) in that it is not appropriate for matters relating to TPI's port to be included in its TMG.
42. The Authority agrees with PwC's recommendation that TPI's TMG should only address its railway and should make no reference to other elements of the TPI/FMG supply chain, such as the port.
43. In relation to PwC's comments on the inclusion of a reference to the Code in the last paragraph of this section of TPI's TMG, the Authority agrees that TPI's wording is not consistent with section 43(3)(b) of the Code and supports PwC's recommendation for this wording to be changed to ensure consistency.

Draft Determination

Required Amendment 1

TPI's proposed (revised) TMG should be amended by deleting all references to TPI's port, its port access regime and its supply chain.

Required Amendment 2

Section 1.1 (headed 'Background') of TPI's proposed (revised) TMG should be amended by deleting the last dot point paragraph and inserting the words "that performance as it relates to requirements imposed on the railway owner by or under the *Railways (Access) Act 1998* (the Act) or the *Railways (Access) Code 2000* (the Code)".

Introduction: Purpose of the TMG (Section 1.2)

TPI's Proposal

44. TPI set out the objectives of its TMG as being to:
 - ensure that TPI's contractual obligations are fulfilled;
 - maximise the efficient utilisation of that Network, within the context of the overall supply chain;
 - ensure that capacity is allocated and managed in a non-discriminatory way.
45. TPI also outlined five main functions of the TMG, involving the scheduling and management of train paths, a framework for conflict resolution, managing interruptions to network availability, managing repairs and maintenance and managing emergencies.

Public Submissions

46. Both NWIOA (page 7) and UMC (page 8) suggested that the purpose of TPI's TMG should be extended to include additional points which appear in WNR's 2006 TMG. The suggestion is that the following wording be included as additions to the purposes outlined in TPI's TMG:
 - To ensure operational safety is maintained through compliance with Safeworking rules, regulations and procedures.

- To ensure the integrity of the track and other infrastructure so that the train plan can be met
- To ensure operating integrity, including train crewing, locomotives, wagons and loading so that the rain plan can be met
- To manage the Network based on agreed entry/exit times.

Pricewaterhouse Cooper's (PwC) Advice

47. PwC advised that the objective set out in section 1.2 of TPI's TMG is broadly comparable to that in section 1.2 of WNR's 2006 TMG.
48. PwC considered that TPI's objective to; "maximise the efficient utilisation of that Network, within the context of the overall supply chain" linked the objectives of the railway with the objectives of the port and was not appropriate.
49. PwC recommended that the above objective should be deleted from TPI's TMG.
50. PwC noted that the additional purposes proposed to be included in TPI's TMG, by the NWIOA and UMC, were included as principles in WNR's 2006 TMG and usefully expand on the purposes of the TMG as set out in this section of TPI's TMG. PwC noted that it considered these additional purposes to be consistent with sections 20(4)(f) and 20(4)(g) of the Act, relating to the safe and reliable use of railway infrastructure and the economically efficient use of the railway, respectively.
51. PwC recommended that the four additional purposes suggested by the NWIOA and UMC be included in this section of TPI's TMG.
52. PwC also recommended that the text of the first dot point under the objectives of TPI's TMG be amended from "ensure that TPI's contractual obligations are fulfilled" to "ensure that TPI's contractual obligations to any person using the railway infrastructure are fulfilled".

Authority's Assessment

53. The Authority agrees with the broad thrust of PwC's recommendations in relation to the changes required to the objectives outlined under this section (on page 3) of TPI's TMG. These objectives are similar to those outlined in TPI's TPP.
54. The Authority considers that due to the similar nature of TPI's TMG and TPP objectives, similar amendments to those set out by the Authority in its draft determination on TPI's TPP (under Amendment 2) are appropriate.
55. The suggestion by the NWIOA and UMC to include, under this section of TPI's TMG, four additional purposes for the TMG similar to the statements outlined under section 3.3 (page 9) of WNR's 2006 TMG, have been considered by the Authority. The Authority has also noted PwC's advice supporting this suggestion.
56. The Authority notes that the statements suggested for inclusion as 'purposes' for TPI's TMG are included in WNR's 2006 TMG under the heading of 'General Principles for Train Management' on page 9 of the TMG. These principles set out not only the obligations of WNR but also the obligations of operators in the management of trains on WNR's railway. The TPI TMG has not included these principles in the equivalent section of its TMG under Appendix B on pages 26 and 27.

57. The Authority considers that TPI should include the above statements in the context under which these statements are expressed in WNR's 2006 TMG rather than as 'purposes' for the TMG. Accordingly, the Authority has set out a required amendment to this effect later in this draft determination, with reference to Appendix B of TPI's TMG.

Draft Determination

Required Amendment 3

Section 1.2 (headed 'Purpose of the TMG') of TPI's proposed (revised) TMG should be amended as follows:

- Amend the first dot point statement from "ensure that TPI's contractual obligations are fulfilled" to "ensure that TPI's contractual obligations to any operator using TPI's Railway Network are fulfilled".
- Amend the second dot point statement from "maximise the efficient utilisation of that Network, within the context of the overall supply chain" to "maximise the efficient utilisation of TPI's Railway Network".
- Add the statement "provide for the safe and reliable use of TPI's railway Network" as an additional dot point.

Introduction: Pre-conditions (Section 1.3)

TPI's Proposal

58. In this section, TPI has stated that the TMG will apply to:
- ... all Operators with whom TPI has an Access Agreement under the Code (including any third party engaged by the Operator as its agent or contractor to perform its obligations under the Access Agreement).
59. TPI also noted that before a service can operate it must have an access agreement in place with TPI and provide TPI with a completed train manifest.

Public Submissions

60. Some submissions highlighted a lack of clarity in the initial proposal by TPI, wherein the wording was not clear as to whether the TMG would apply to all operators (operators with access agreements both within and outside the Code). TPI clarified its position on this matter through a revision to this section of its TMG making it clear that the TMG will apply to operators with access agreements within the Code.
61. NWIOA (page 8) submitted that:
- TPI's definition of an operator excludes those with access agreements outside of the code. If all above rail haulage operators are not included in the TPI Rail Access Regime, in the event that TPI offered to negotiate access outside the Code, then the transparency and fairness of capacity and priority decisions will not be achieved.

62. ARTC (page 9) submitted that the TMG should apply to each allocated train path regardless of whether access applications are made inside or outside of the Code, and suggested that:
- ...wording be modified to reflect this (as described earlier in relation to the TPP). This will resolve any issues around transparency and would likely result in more effective network control.
63. Hancock (ACIL) (page 24) commented that TPI should be asked to state explicitly that the TMG applies also to access agreements negotiated outside of the Code.

Pricewaterhouse Cooper's (PwC) Advice

64. PwC noted that WNR's 2006 TMG applies to all operators with access agreements, whether within or outside the Code.
65. Consistent with the views expressed by the NWIOA, UMC and Hancock (ACIL), PwC considered that in the interests of transparency and effective management, TPI's TMG should be required to cover all operators, whether their access agreements have been negotiated within or outside the Code.
66. PwC recommended that TPI include a statement similar to that under the third paragraph of section 1.2 of WNR's 2006 TMG to the effect that the TMG will apply to all operators, regardless of whether their access agreements have been negotiated within or outside the Code. PwC further recommended that TPI make it clear, consistent with this statement, that the TMG would also apply to TPI/FMG in its role as an operator.

Authority's Assessment

67. The Authority notes the comments in submissions and the advice of PwC in supporting an approach similar to that of WNR, where the TMG has been applied to all access agreements whether within or outside the Code.
68. While the Authority can see that such an approach could have benefits in ensuring transparency through a uniform application of the TMG arrangements to all access agreements, the Code only imposes obligations on the railway owner in relation to applying the TMG where access agreements are negotiated under the Code. The Code does not impose any obligation on the railway owner to apply the TMG to access agreements negotiated outside the Code.
69. The Authority therefore considers TPI's statement under section 1.3 of its TMG, to the effect that the TMG will apply to all operators with access agreements under the Code, to be appropriate. The rail access legislation allows TPI to enter into commercial access agreements outside of the Code with terms and conditions as agreed between TPI and the access seeker. TPI can in these circumstances choose to negotiate equivalent arrangements to those in its TMG, or other arrangements, as it considers appropriate.
70. However, the Authority notes that any access agreement negotiations carried out by the railway owner under the Code need to comply with the provisions of section 16 of the Code. This section imposes obligations on a railway owner in relation to such negotiations. Section 16(2) specifies that the railway owner must not unfairly discriminate between rail operations under the Code and the rail operations of the railway owner in relation the management of train control and other matters. Section 16(2) states:

In the negotiation of access agreements the railway owner must not unfairly discriminate between the proposed rail operations of a proponent and the rail operations of the railway owner including, without limitation, in relation to –

- (a) the allocation of train paths;
- (b) the management of train control; and
- (c) operating standards.

71. The Authority considers section 1.3 of TPI's TMG to be appropriate, subject to any definitional amendments required later in this draft determination.

Scheduling Principles: Master Train Plan (Section 2.1)

TPI's Proposal

72. TPI has proposed to develop and maintain a Master Train Plan (**MTP**) which will record the service entitlements of operators, the capacity required to provide these entitlements and the periods of time allocated for its planned possessions of the network.
73. TPI also set out a number of circumstances under which the MTP could be modified.

Public Submissions

74. NWIOA (page 10) provided the following comments:
- The term 'cyclic traffic' should be used in place of the term 'cyclic traffics'.
 - The description of cyclic traffic in section 2.1(a)(ii) is different from the definition cyclic traffic in Appendix A. NWIOA submits that the definition should be made consistent as an allocation 'within a period of time' as per the definition in Appendix A.
 - The MTP scheduling principles should be expanded to cover matters such as axle loads, train lengths and train operating priorities.
 - Ad hoc services should be included under section 2.2 ('Weekly Train Plan') rather than this section.
 - In respect of TPI taking possession of the railway to undertake necessary work, the commitment that it will "use its best endeavours to consult with Operators" should be replaced by "... a regime whereby Operators are continuously updated on the competing needs to access the network".
75. UMC (page 6) suggested that some additional words be added following TPI's statement that it would undertake to "use its best endeavours to consult Operators" with respect to taking possession of the network to undertake necessary work. The additional words proposed by UMC were as follows:

To facilitate the communications process, the Operator and TPI shall provide for a 24 hour communications link unless otherwise agreed. All affected Operators will be consulted as to their positions and needs including factors such as crewing arrangements, sensitive freight and shipping or production requirements.

Pricewaterhouse Cooper's (PwC) Advice

76. PwC advised that the broad principles of TPI's TMG, whereby the MTP provides a register of service entitlements while the Weekly Train Plan provides for the real time management of train services, are considered to be consistent with the efficient operation of TPI's railway network.
77. PwC also noted that an apparent greater level of flexibility provided by the TPI scheduling principles, relative to those in WNR's 2006 TMG, is considered reasonable given the nature of TPI's freight operations compared to those of WNR.
78. PwC concurred with the NWIOA's views in relation to Cyclic Traffic and agreed that ad hoc services should be accommodated within the weekly train plan rather than the MTP, as the former provides for real time management of services, whereas the latter is a register of service entitlements.
79. In relation to the additional MTP scheduling principles suggested by the NWIOA, PwC noted that WNR's 2006 TMG does not contain similar principles and that such information could be expected to be covered by the information which a railway owner must provide to an entity seeking access under section 7 of the Code.
80. PwC noted that the arrangements proposed by TPI for taking possession of the network to undertake necessary work are broadly similar to the arrangements in WNR's 2006 TMG and are therefore considered to be reasonable.
81. PwC recommended changes to this section of TPI's TMG as follows:
 - The time period covered by the MTP (in terms of whether it covers 12 months or some other period) should be specified.
 - The definition of MTP should be made more clear.
 - The term 'cyclic traffic' should be used in place of 'cyclic traffics'.
 - The description of cyclic traffic in section 2.1(a)(ii) should describe cyclic traffic as being an allocation 'within a period of time' rather than 'per week'.
 - Ad hoc services as covered in section 2.1 of the MTP should be removed from this section and covered in section 2.2 (Weekly Train Plan).

Authority's Assessment

82. The Authority agrees with PwC's assessment that TPI's proposed MTP arrangements are broadly consistent with ensuring the efficient operation of its railway network.
83. The Authority also generally agrees with PwC's advice in relation to the comments by the NWIOA.
84. However, with regard to the issue of TPI taking possession of the network to undertake necessary works (third paragraph on page 6 under section 2.1), the Authority considers that TPI should set out the processes by which it will consult with operators rather than state that 'TPI will use its best endeavours to consult with operators'.

85. The Authority notes that section 4.1 of TPI's TMG (headed 'Network repairs, maintenance and upgrades') sets out in detail a consultation process with operators in the event that TPI needs to undertake repairs, maintenance or upgrades or take possession of the network to carry out such works. It therefore appears inappropriate for the above paragraph to be included in section 2.1 of TPI's TMG, particularly in view of the potential inconsistencies between this paragraph and the arrangements under section 4.1. The Authority also notes that WNR's 2006 TMG does not contain a similar paragraph but rather deals with this matter through a separate section (section 3.5) under the heading 'Repairs, Maintenance and Upgrading of the Network' which is similar to TPI's section 4.1.
86. The Authority agrees with PwC's recommendations and notes that a number of these matters were also raised in TPI's TPP. In these cases, similar recommendations to those required by the Authority in its draft determination on TPI's TPP are appropriate.
87. In regard to the comments by UMC, the Authority agrees that communication and consultation protocols between TPI and operators need to be included in TPI's TMG, similar to the protocols under section 2.4 of WNR's 2006 TMG. This matter has been dealt with later in this draft determination.

Draft Determination

Required Amendment 4

Section 2.1 (headed 'Master Train Plan') of TPI's proposed (revised) TMG should be amended as follows:

- Provide a more clear definition of 'Master Train Plan'
- Specify the time period covered by the Master Train Plan (for example whether it covers 12 months or some other period).
- Amend "Cyclic Traffics" to "Cyclic Traffic".
- Delete "per week" under the first paragraph on page 5 and replace with "within a particular period of time".
- Delete the three paragraphs describing the 'Ad hoc Service' as outlined under (c) on page 5.
- Delete the second last paragraph under this section on page 6 (this paragraph commences "At all times...").

Scheduling Principles: Weekly Train Plan (Section 2.2)

TPI's Proposal

88. In this section, TPI proposed matters to be covered by a Weekly Train Plan (**WTP**) and the procedures and requirements for modifying the WTP. The primary purpose of the WTP is described by TPI as being to "schedule the times of

Services for Cyclic Traffics, based on Train Requests submitted by Operators against their Service Entitlement”.

89. The first paragraph of this section clearly links the port operations with the rail operations, with TPI stating that “This schedule will be prepared in consultation with the Port Operator which will involve consideration of, amongst other things, stockpile management and shipping requirements”.
90. This section outlines the basis for the preparation of the WTP as being train paths specified for timetabled traffics, train path requests for cyclic traffics and planned possessions.
91. TPI also set out a number of circumstances under which the WTP could be modified.

Public Submissions

92. The NWIOA commented (page 11) that the proposed involvement of TPI’s port undermined the transparency objective of the rail access regime and should not be approved by the Authority.
93. The NWIOA also suggested that the WTP should be prepared and published in the same period that notification of a shipping schedule is known (for example 10 days) to ensure efficient planning and usage of the rail network.
94. A further comment by the NWIOA was that a longer planning period should be provided in TPI’s TMG (for example three months) to allow operators to communicate and consider each others’ proposed track usage requirements.
95. UMC (page 8) supported the comments by the NWIOA in relation to the need for a longer period of planning for TPI’s TMG, of a similar order (three months) to that suggested by the NWIOA.
96. Hancock (GHD) on page 3, expressed concern over TPI’s TMG linking TPI’s port and rail operations. Hancock(GHD) noted that “In order to provide true open access to the railway TPI must decouple the port from the railway”.

Pricewaterhouse Cooper’s (PwC) Advice

97. In relation to the issue of TPI linking its port and rail operations, PwC advised that the port operator’s involvement in the in the WTP should be transparent and that preparation of the WTP should involve the railway operators. PwC also advised that TPI’s linking of the operation of the port with the railway is inconsistent with the requirements of the rail access regime.
98. PwC recommended that the following changes should be made to this section of TPI’s TMG:
 - The involvement of the port operator in the preparation of the WTP should be transparent.
 - The preparation of the WTP should involve the railway operators.
 - Linkages between the port and railway objectives should be removed.
99. PwC advised that it did not consider that changes were necessary to TPI’s TMG to deal with the other matters raised by the NWIOA relating to the length of planning

periods for the WTP and the TMG. PwC suggested that these matters should be considered after a period of operation of the TMG when the Authority carries out its first review of the TMG.

Authority's Assessment

100. With regard to the issue of TPI linking its port and rail operations, the Authority has previously commented that TPI's TMG should only address its railway and should make no reference to other elements of the TPI/FMG supply chain, such as the port. Under Amendment 1 of this draft determination, the Authority requires the removal of all references to TPI's port.
101. The Authority generally agrees with the recommendations of PwC. However, the Authority does not consider it appropriate for the port operator to have any involvement in TPI's TMG including in the preparation of the WTP. The rail access regime applies only to the specific railway networks defined under Schedule I of the Code. In the case of TPI, the railway network consists of all tracks that are part of the railway constructed pursuant to the Agreement Act. TPI's port infrastructure and operations are outside the jurisdiction of the Code and therefore the requirements of this port should not form part of TPI's TMG. Under the Code, the TMG relates only to the requirements of the railway owner and railway operators (provided these operators have access agreements under the Code).
102. In relation to the matters raised by both the NWIOA and UMC relating to TPI's TMG providing a longer planning period to allow operators to consult with each other over track usage, the Authority notes PwC's view that the TMG should be allowed to operate first before seeing if this is an issue in practice.
103. While the Authority understands the basis for PwC's view, it considers that it would be more appropriate to include a longer planning process into TPI's TMG to enable operators to undertake longer-term planning in order to ensure the most efficient use of the railway network. The primary issue which results in the need for TPI to prepare WTPs is the cyclic train path approach adopted by TPI. WNR does not have WTPs as its train paths are timetabled services.
104. Under TPI's cyclic train path approach, each operator's path timetable may be different with only the total number of paths per period fixed. This leads to the need for the railway owner to establish which operator is to be allocated specific train paths over each period. TPI has proposed a weekly period (on the basis of operators forecasting their cyclic train path requirements one week ahead). There appears to be no reason as to why the WTP could not be extended to a fortnightly train plan, along the lines suggested by the NWIOA. The Authority considers that a fortnightly train plan for cyclic train paths, with operators forecasting their required train paths two weeks in advance, would enable operators to better plan their rail usage requirements. Preparation of fortnightly train plans should not impose unreasonable requirements on TPI.
105. In addition, the Authority considers that, consistent with the comments by the NWIOA and UMC, there is the need under TPI's cyclic train path approach to have a longer term indicative train path plan beyond a fortnightly firm train plan in order for operators to understand how their cyclic train path requirements are likely to fit in with those of other operators over the longer term. Both the NWIOA and UMC have suggested a three month period for this longer term train plan. The Authority agrees with this suggestion and considers that the provision of a three month preliminary train plan moving with and following on from a firm fortnightly train plan

is reasonable. A three month plan would not need to be a formal train plan but should provide sufficient information to allow operators to obtain an overall view of anticipated train path requests for the network over that longer period. This would enhance operators' ability to plan network requirements in the most efficient manner.

106. PwC has recommended the involvement of operators in the preparation of the WTP. The Authority notes that TPI has not set out clearly how operators will be involved in this process other than submitting their train path requests to TPI. The Authority considers that, while acknowledging that TPI has the final decision in setting the train plan, operators should be able to have input in assisting TPI to finalise this plan once TPI has received all the required information from operators. On the basis of the Authority's view, as discussed above, in relation to fortnightly train plans and three month preliminary train plans or similar, TPI should have a consultation process in place with operators to prepare these plans.
107. The Authority also notes that TPI has included, as the last paragraph in this section, a statement the same as that contained in the second last paragraph of the previous section. This paragraph relates to the issue of TPI taking possession of the network to undertake necessary works. Consistent with its previous comments, the Authority considers that the inclusion of this paragraph is inappropriate.

Draft Determination

Required Amendment 5

Section 2.2 (headed 'Weekly Train Plan') of TPI's proposed (revised) TMG should be amended as follows:

- Delete the third sentence of the first paragraph.
- Revise this section to change the Weekly Train Plan to a Fortnightly Train Plan.
- Incorporate in this section, or elsewhere under section 2, appropriate arrangements to establish a three monthly preliminary train plan (or similar) covering the three month period beyond the fortnightly train plan.
- Set out clearly a process for operators to be involved in the preparation and finalisation of the fortnightly train plan and the three monthly preliminary train plan (or similar) following TPI's receipt of operators' train path requests for these periods.
- Delete the last paragraph under this section (this paragraph commences "At all times...").

Scheduling Principles: Contested Train Path (Section 2.3)

TPI's Proposal

108. TPI has proposed a process to deal with circumstances where more than one operator seeks access to the same train path, in terms of the WTP. This is defined by TPI as being a contested train path.

109. Similar to the previous section, TPI has proposed the port operator having a direct influence on the TMG through being involved in the resolution process for contested train paths.
110. This section sets out the process proposed by TPI to decide on which operator is given the train path in the case of this path being contested following TPI's compilation of operators train path requests as part of its formulation of the WTP.

Public Submissions

111. The NWIOA expressed similar concerns on this section, with regard to the involvement of TPI's port operator, as it had outlined on the previous section. The NWIOA's view is that it is inappropriate for the port operator to be involved in these arrangements under the TMG.
112. The NWIOA also commented on several aspects of the process for resolving contested train paths set out by TPI. Firstly, the NWIOA noted that the part of this process outlined under (c) would require a high level of transparency in order to work. Secondly, the NWIOA pointed out that the part of this process under (d) would be very administratively demanding and would require information to be translated to the train controller in a transparent and fair manner and in a format which can be readily applied.
113. UMC agreed (page 9) with TPI's proposed approach but requested that the decisions, and the information these decisions are based on, be recorded in an auditable form so as to demonstrate consistency with TPI's proposed processes.
114. TPI in its supplementary submission noted that:

TPI rejects the assertion that the port operator can change path priorities without reference or regard to the Rail Access Arrangements in place. The specific provision in the guidelines refers to contested train paths, which by definition relates to a path that more than one operator would like to run a train on. It would seem to be self evident that port delivery requirements should be a determinant of priorities in the event of a contested train path..

Pricewaterhouse Cooper's (PwC) Advice

115. In relation to the issue of TPI's port operator being directly involved in the resolution process for contested train paths under (a), PwC advised that it considered this arrangement to be inconsistent with the scope of the rail access regime.
116. PwC recommended that the paragraph under (a), dealing with the involvement by the port operator in TPI's process, should be deleted.
117. With regard to the views of the NWIOA, PwC advised that TPI's wording under (d) and (e) was imprecise in places. PwC considered that this imprecision and the absence of a process for operators to agree a contested train path amongst themselves may mean, that in cases where a contested train path arises, the process would default to a unilateral determination by the manager (train control and scheduling) under (e). While this manager needed to be able to make such decisions at times, PwC expressed concern that this did not become the standard means of resolving contested train paths due to deficiencies in the process set out by TPI for resolving these paths.

118. PwC considered that the criteria for the manager (train control and scheduling) to apply in reaching a determination on the allocation of a contested train path are vague. PwC advised that the wording of (e) needed to be amended to make it clear as to the criteria which the manager will apply under these circumstances.
119. In relation to this matter, PwC recommended the following:
- The wording in paragraphs (d) and (e) should be amended in order to enable third parties to understand the precise manner in which those paragraphs would be applied.
 - Paragraph (e) should specify the process and criteria to be applied by the Manager, Train Control and Scheduling, in making a determination in terms of this section.
 - Records of each determination (including a statement of reasons) of the Manager, Train Control and Scheduling, should be made available on request to operators/entities seeking access and to the Authority.
 - The term “Manager, Train Control and Scheduling” should be defined.

Authority’s Assessment

120. With regard to the issue of the port operator being involved in TPI’s process for resolving contested train paths, the Authority’s view is (as stated under the previous section) that the Authority does not consider it appropriate for the port operator to have any involvement in TPI’s TMG as the port infrastructure and operations are outside the jurisdiction of the Code and therefore the requirements of the port should not form part of the TMG. The Authority agrees with PwC’s recommendation that the relevant paragraph should be deleted.
121. In relation to part (c) of TPI’s process, the Authority considers this step in the process whereby operators are given the opportunity to agree among themselves as to the allocation of a contested train path as being an important part of the process. The Authority agrees with the NWIOA, that the provision of adequate information on other operators train paths is essential if this stage of the process is to work. The Authority also notes that its required amendments to the previous section, relating to extending the WTP to a fortnightly train plan and having an additional three month preliminary train plan (or similar), should assist in helping this stage to work as it will provide more information to operators on the train path requirements for the network.
122. The Authority notes the NWIOA’s views on part (d) and agrees that should the process extend to this stage, there may well be administrative difficulties in effectively applying this stage. The Authority agrees with PwC’s advice that some elements of parts (d) and (e) are imprecise and that these processes need to be set out more clearly including specifying the criteria to be applied under (e). The Authority generally agrees with PwC’s recommendations on (d) and (e).
123. Taking account of UMC’s view and the PwC advice, the Authority considers that whenever TPI makes an allocation decision on a contested train path, at whichever stage in the process this occurs, the decision and associated reasons should be recorded in a register by TPI and each affected operator should be provided with a copy of this information. A copy of this information should also be provided to the Authority on request.

Draft Determination**Required Amendment 6**

Section 2.3 (headed 'Contested Train Path') of TPI's proposed (revised) TMG should be amended as follows:

- Delete part (a).
- Include under part (c) a statement to the effect that TPI will ensure that affected operators are provided with as much relevant train path information as possible in order to facilitate the ability of operators to reach agreement between themselves consistent with the objectives of (c).
- Revise parts (d) and (e) by setting out the processes under these parts more precisely and clearly.
- Include under part (e) clear statements of the process and the specific criteria to be applied by the Manager, Train Control and Scheduling, in making a determination under (e).
- The term "Manager Train Control and Scheduling" should be defined.
- Include a statement at the end of this section noting that whenever TPI makes an allocation decision on a contested train path, at whichever of the above stages in the process this occurs, the decision and associated reasons will be recorded in a register by TPI and each affected operator will be provided with a copy of this information. A copy of this information will also be provided to the Authority on request.

Real-time Management of Services: Services presented on time, late, or early (Section 3.1)

Services Presented on Time

TPI's Proposal

124. TPI has outlined the approach proposed to be adopted to manage the operation of trains on its railway with respect to allocated train paths for services presented on time by operators.

Public Submissions

125. Hancock (ACIL) (page 24) commented that although TPI's proposed approach was similar to that of WNR, there were some areas of difference where TPI has relaxed the railway owner's obligations or increased those of operators.
126. TPI in its supplementary submission of 15 October (page 1) responded to the above comment as follows:

It is not reasonable to assume that the networks managed by TPI and WestNet are sufficiently similar that equivalent processes should apply. The railway built by TPI from Port Hedland to Cloud Break is inherently different to WestNet's rail network in respect of climate, terrain and ground conditions; and it will be carrying

considerably larger tonnages of product per rake. It also needs reiterating that TPI is operating a greenfields railway.

All factors combine to create a very different environment for the respective rail systems and therefore it is necessary that greater time and operating allowances are in place for TPI's railway, than exist for WestNet.

Further; and for the above reasons, TPI uses the term reasonable endeavours regularly in the proposal guidelines given the uncertainties inherent with a greenfields railway in the Pilbara.

Pricewaterhouse Cooper's (PwC) Advice

127. PwC advised that this section is broadly comparable with the first part of section 2.1 of WNR'S 2006 TMG.
128. PwC noted that the difference between TPI's proposed approach and section 2.1 of WNR's 2006 TMG was that WNR required the operator to advise it within 15 minutes of the scheduled departure time that the service will be ready for departure on time whereas TPI has proposed that this time be increased to 30 minutes.
129. PwC advised that it did not consider this proposed time increase to be unreasonable.

Authority's Assessment

130. The Authority has noted PwC's advice in relation to the increased operator notification time prior to departure proposed by TPI compared that contained in WNR's 2006 TMG. The Authority's view concurs with that of PwC to the effect that this change appears reasonable. In reaching this view, the Authority has considered the comments by TPI in its supplementary submission on the differences between its Pilbara railway and WNR's railway in the south-west.
131. The Authority also noted that TPI uses the term 'best endeavours' rather than 'ensures', as used in WNR's 2006 TMG, in relation to the railway owner's responsibility for making sure that trains entering the network on time also exit on time. TPI's TMG states that TPI will use its 'best endeavours' to ensure that that trains entering the network on time also exit on time whereas, under WNR's 2006 TMG, WNR will 'ensure' that trains entering the network on time also exit on time.
132. The Authority considers that TPI's use of the term 'best endeavours' in the above context is reasonable based on an acceptance of the differences between TPI's Pilbara railway and WNR's railway in the south-west, as outlined in TPI's supplementary submission.

Services Presented Early

TPI's Proposal

133. TPI has outlined the approach proposed to be adopted to manage the operation of trains on its railway with respect to allocated train paths for services presented early by operators.

Public Submissions

134. Hancock (ACIL) (page 24) commented that TPI used 'reasonable endeavours' in several places under this section whereas WNR used "best endeavours' in the equivalent areas.
135. TPI's comments in its supplementary submission, as outlined above, are also relevant to this section.

Pricewaterhouse Cooper's (PwC) Advice

136. PwC advised that this section is broadly comparable with the equivalent part of section 2.1 of WNR'S 2006 TMG.
137. PwC noted that the main differences between the TPI approach and that under WNR's 2006 TMG were as follows:
 - A requirement, under TPI's proposal, for an operator to give at least 30 minutes notice of a train presenting more than 15 minutes early (compared with 15 minutes notice under WNR's 2006 TMG).
 - For a train which presents early, TPI commits to make "reasonable endeavours" to ensure that a train entering the network early holds that gain, whereas WNR commits to make "best endeavours" in this case.
 - In allocating priorities to services, TPI states that "reference may be made to the Decision-Making Matrix". WNR's 2006 TMG is more definite and provides that a train path will be provided for a service presented early or late "at the first available opportunity and in accordance with the general principles of train management in Section 3.3" (which is the equivalent to TPI's proposed Decision-Making Matrix)
138. PwC advised that it had taken the differences between the railway networks into consideration in its assessment that TPI should adopt a "best endeavours" commitment consistent with the WNR arrangements, in place of "reasonable endeavours", in a number of places in the TMG. PwC added that this was not intended to mean that the two networks operate to the same standards, but that the commitments of the railway owners to accommodate the needs of operators should be similar.
139. The recommendations of PwC were that TPI's TMG should include some of the statements contained under section 2.1 of WNR's 2006 TMG. The statements suggested by PwC are as follows:
 - TPI will use its best endeavours to accommodate a service which is running early or which is presented at the point of entry to the Network more than 15 minutes early by providing a train path for that service at TPI's first available opportunity in accordance with the general principles of train management in the Decision-Making Matrix.
 - TPI and the Operator will use their best endeavours to ensure that such services which are presented more than 15 minutes early depart the Network no later than the scheduled time.

Authority's Assessment

140. The Authority has considered the areas of difference between TPI's proposal and WNR's 2006 TMG highlighted by PwC.
141. In regard to the first of these matters, related to an operator's notification time for an early train being increased in TPI's proposal to 30 minutes, the Authority considers TPI's proposal to be reasonable on the same basis as previously outlined for 'on time' trains.
142. The second matter related to TPI's use of the term 'reasonable endeavours' compared to the equivalent part of WNR's 2006 TMG where the term "best endeavours" is used. The Authority agrees with PwC's advice that TPI should use similar wording to WNR in this context.
143. The third issue related to TPI's less definitive reference to use of its Decision-Making Matrix in allocating priorities to services, compared with the clear commitment to act in accordance with the general principles of train management under the Decision-Making Matrix in WNR's 2006 TMG. The Authority agrees with PwC's advice to the effect that TPI's proposal should be changed to be more consistent with the relevant wording in WNR's 2006 TMG.
144. The Authority agrees with the first recommendation set out by PwC. In relation to the second recommendation, the Authority considers that a change to the first part of the second paragraph of this section of TPI's TMG, consistent with WNR's 2006 TMG, is more appropriate and would achieve the same purpose. This change would amend the words "TPI will use reasonable endeavours" to "TPI will use its best endeavours".

Services Presented Late

TPI's Proposal

145. TPI has outlined the approach proposed to be adopted to manage the operation of trains on its railway with respect to allocated train paths for services presented late by operators.

Public Submissions

146. Hancock (ACIL) (page 24) noted that TPI used the term 'reasonable endeavours' to ensure that late trains recover lost time whereas WNR used "best endeavours".
147. TPI's comments in its supplementary submission, as outlined above, are also relevant to this section.

Pricewaterhouse Cooper's (PwC) Advice

148. PwC advised that this section is broadly comparable with the equivalent part of section 2.1 of WNR'S 2006 TMG.
149. PwC noted that the main differences between the TPI approach and that under WNR's 2006 TMG were as follows:
- The use by TPI of a 30 minute notification requirement for operators of late trains which is not contained in WNR's 2006 TMG.

- With respect to a service which is presented at the point of entry to the network after its scheduled departure time, TPI will use its reasonable endeavours to accommodate the service by providing a train path at the next available opportunity. Under WNR's 2006 TMG, WNR commits to provide a train path at its first available opportunity in accordance with the general principles of train management under the equivalent Decision-Making Matrix.
 - In allocating priorities to services, TPI states that "reference may be made to the Decision-Making Matrix". As noted previously, WNR's 2006 TMG is more definite and provides that a train path will be provided for a service presented early or late "at the first available opportunity and in accordance with the general principles of train management in Section 3.3" (which is the equivalent to TPI's proposed Decision-Making Matrix)
150. PwC recommended that a statement similar to that outlined in its first recommendation under the previous section be added to this section of TPI's TMG. This statement is as follows:
- TPI will use its best endeavours to accommodate a service which is running late or which is presented at the point of entry to the Network late by providing a train path for that service at TPI's first available opportunity in accordance with the general principles of train management in the Decision-Making Matrix.

Authority's Assessment

151. The Authority has considered the areas of difference between TPI's proposal and WNR's 2006 TMG identified by PwC.
152. In regard to the first of these matters, related to an operator's 30 minute notification time for a late train, the Authority considers TPI's proposal to be reasonable on the same basis as previously outlined for 'on time' and 'early' trains.
153. The Authority agrees with PwC's recommendation in regard to the inclusion of a paragraph similar to that in section 2.1 of WNR's 2006 TMG to deal with the two other matters it identified which differed from WNR's 2006 TMG.
154. The Authority also considers that TPI's commitment to use 'reasonable endeavours' to ensure that an early train holds that should be changed to be more consistent with WNR's 2006 TMG by amending these words to "TPI will use its best endeavours".

Draft Determination**Required Amendment 7**

Section 3.1 (headed 'Services presented on time, late or early') of TPI's proposed (revised) TMG should be amended as follows:

- Delete the second sentence of the first paragraph under 3.1.2 and replace with "TPI will use its best endeavours to accommodate a service which is running early or which is presented at the point of entry to the Network more than 15 minutes early by providing a train path for that service at TPI's first available opportunity in accordance with the general principles of train management in the Decision-Making Matrix".
- Delete the words "TPI will use reasonable endeavours" in the second paragraph under 3.1.2 and replace with "TPI will use its best endeavours".
- Delete the fourth paragraph under 3.1.3 and replace with "TPI will use its best endeavours to accommodate a service which is running late or which is presented at the point of entry to the Network late by providing a train path for that service at TPI's first available opportunity in accordance with the general principles of train management in the Decision-Making Matrix".
- Delete the words "TPI will use reasonable endeavours" in the fifth paragraph under 3.1.3 and replace with "TPI will use its best endeavours".

Real-time Management of Services: Instructions (Section 3.2)**TPI's Proposal**

155. This section outlines TPI's proposed approach for the issuing of instructions to operators.
156. TPI lists the type of instructions it may issue and the obligations on TPI and operators in relation to these instructions under certain circumstances.

Public Submissions

157. Hancock (ACIL) (page 25) noted that this section of TPI's TMG was very similar to WNR's provisions in its TMG. However, Hancock (ACIL) outlined two differences, as follows:
- WNR's TMG requires operators to comply with an instruction (other than a train control directive) only if reasonable time is given to comply, whereas TPI proposed only to endeavour to give operators reasonable notice to comply with an instruction.

- WNR's TMG does not hold the operator liable for any delay suffered or cost incurred by WNR in the operator complying with a proper instruction whereas TPI's TMG does not include such a clause
158. The ARTC (page 9) agreed with Hancock (ACIL) that TPI's TMG should include a clause excluding the operator from liability to TPI in the event of complying with a proper instruction. The ARTC noted that both itself and WNR have such a clause in their TMGs.
159. The NWIOA (page 12) commented that an additional clause should be added into this section of TPI's TMG, stating that where that instruction is unreasonable or impractical, for operating and cost reasons, the operator may decline to run the service without penalty to its service level performance record.
160. UMC (page 9) made a similar suggestion to that of the NWIOA. In addition, UMC noted that the period for which TPI's instruction applies should be clearly stated.

Pricewaterhouse Cooper's (PwC) Advice

161. PwC advised that this section of TPI's TMG is broadly comparable with pages 5 and 6 of section 2.1 of the WNR's 2006 TMG.
162. PwC agreed with Hancock (ACIL)'s argument that TPI's TMG should only require operators to comply with an instruction (other than a train control directive) if the instruction was given a reasonable time before the required time for compliance.
163. PwC agreed with the Hancock (ACIL) and ARTC view that TPI's TMG should contain a clause releasing operators from liability as a result of complying with a proper instruction issued by TPI.
164. PwC also agreed with the NWIOA and UMC suggestion that an additional clause be added to TPI's TMG enabling operators to decline to run a service where an instruction is unreasonable or impractical for operating and cost reasons without penalty to the operator's service level performance record.
165. PwC recommended the following statements be added to this section of TPI's TMG:
- 1) "Unless the train control centre gives an instruction that is a train control direction, the operator need only comply with an instruction if it was given a reasonable time before the required time for compliance".
 - 2) "The operator is not responsible for any delay suffered or cost incurred by TPI in the operator complying with a proper instruction of TPI and TPI releases the operator from any such claim arising from such compliance".
 - 3) "Where an instruction is unreasonable or impractical, for operating and cost reasons, the operator may decline to run the service without penalty to its service level performance record".
166. In addition, PwC recommended that in the final paragraph of this section of TPI's TMG, the words "an instruction" should be replaced with "a proper instruction". PwC also recommended that TPI define the term "Network Rules" as used in this section.

Authority's Assessment

167. The Authority notes PwC's advice that this section of TPI's TMG is similar to section 2.1 (pages 5 and 6) of WNR's 2006 TMG.
168. The Authority agrees with the views expressed in submissions and the advice from PwC to the effect that additional clauses should be added to this section of TPI's TMG consistent with similar clauses in WNR's 2006 TMG. These additional clauses are noted under PwC's recommendations 1 and 2 above.
169. In relation to PwC's recommendation 3, the Authority notes that WNR's 2006 TMG does not contain a similar clause. However, the Authority agrees with PwC's view that such a clause appears to be reasonable.
170. The Authority agrees with PwC's recommendations that in the final paragraph of this section of TPI's TMG, the words "an instruction" should be replaced with "a proper instruction" and that TPI should define the term "Network Rules" as used in this section.
171. The Authority has also noted UMC's comment that the period for which TPI's instruction applies should be clearly stated. This situation is relevant where a variation to a train path is intended to be temporary rather than permanent. In the case of permanent variations, TPI has included a similar clause to that in WNR's 2006 TMG. In the case of a temporary variation, WNR's 2006 TMG notes that the duration of a temporary train path will be consistent with the duration of the instruction issued. TPI does not include a similar clause. The Authority considers that TPI's TMG should include a clause relating to temporary variations similar to that in WNR's 2006 TMG.
172. The Authority has also considered the use by TPI of the term "best endeavours" in relation to operators responsibilities in complying with instructions (part (d) in second last paragraph on page 13) and "endeavour" in relation to TPI's responsibilities in issuing instructions (parts (a) and (b) in paragraphs five and six on page 13). The Authority's view is that these terms should be consistent and should be expressed as "best endeavours" both for the operators and for TPI.

Draft Determination**Required Amendment 8**

Section 3.2 (headed 'Instructions') of TPI's proposed (revised) TMG should be amended as follows:

- Under the heading 'In issuing such instructions TPI will:' on page 13, amend the paragraphs as follows:
 - part (a): Delete "endeavour" and replace with "use its best endeavours".
 - part (b): Delete "endeavour" and replace with "use its best endeavours".
 - Add a new part (e) stating: "where a variation to a Train Path is to be temporary, the duration of the temporary Train Path will be consistent with the duration of the Instruction issued".
- Include a new paragraph as the second last paragraph on page 13, stating: "Unless the Train Control Centre gives an instruction that is a Train Control Direction, the Operator need only comply with an Instruction if it was given a reasonable time before the required time for compliance. Where an Instruction is unreasonable or impractical, for operating and cost reasons, the Operator may decline to run the service without penalty to its Service Level Performance Record".
- Include a new sentence as the second sentence in the last paragraph on page 13, stating: "The Operator is not responsible for any delay suffered or cost incurred by TPI in the Operator complying with a proper Instruction of TPI and TPI releases the Operator from any such claim arising from such compliance".
- Delete the words "an Instruction" in the second line of the final paragraph on page 13 and replace with "a proper Instruction".
- Define the terms "Network Rules" and "Service Level Performance Record".

Managing Infrastructure Issues: Network repairs, maintenance and upgrades (Section 4.1)

Possessions

TPI's Proposal

173. This section of TPI's TMG describes the procedures proposed to be followed by TPI in liaising with operators in order to perform repairs, maintenance or upgrading of the network or take possession of any part of the network for the purpose of undertaking repairs, maintenance or upgrades at any time.

Public Submissions

174. Hancock (ACIL) (page 25) commented that at paragraph (b), on page 14, TPI commits only to using 'reasonable endeavours' to consult with affected operators,

whereas WNR states that it ‘will at all times consult with operators’ in the equivalent section (section 3.5, paragraph 2) of its TMG.

175. The NWIOA (page 12) noted that TPI needed to provide transparency and meaningful dialogue about how the network possessions are to be handled.
176. UMC (page 9) commented that part (b) of this section be replaced with the following words:
- All affected operators will be consulted as to their positions and needs including factors such as crewing arrangements, sensitive freight and shipping or production requirements.

Pricewaterhouse Cooper’s (PwC) Advice

177. PwC advised that this section of TPI’s TMG is comparable with section 3.5 of the WNR’s 2006 TMG, entitled “Repairs, Maintenance and Upgrade of the Network”. However, PwC noted that there were some differences between the WNR and TPI TMGs.
178. PwC advised that in relation to part (b) of TPI’s TMG, TPI’s commitment to use ‘reasonable endeavours’ to consult with affected operators is a lesser commitment than that of WNR’s ‘will at all times’ consult with affected operators, in the equivalent section of its TMG.
179. PwC also advised that, in relation to part (c) of TPI’s TMG, TPI’s commitment to use ‘reasonable endeavours’ to provide an alternative train path is a lesser commitment than that of WNR’s ‘best endeavours’ to provide an alternative train path, in the equivalent section of its TMG.
180. PwC recommended that the following changes be made to this section of TPI’s TMG:
- Part (b) be replaced by the fourth paragraph of section 3.5 of WNR’s 2006 TMG.
 - Under part (c), replace ‘reasonable endeavours’ with ‘best endeavours’.

Authority’s Assessment

181. The Authority notes that this section is similar to the first part of section 3.5 of WNR’s 2006 TMG.
182. In relation to part (b) of this section of TPI’s TMG, the Authority notes the advice of PwC that TPI’s commitment of ‘reasonable endeavours’ should be changed to ‘will at all times’ to ensure consistency with the equivalent section in WNR’s 2006 TMG. The Authority agrees with this advice.
183. The Authority also notes the comments from UMC in regard to further changes it considers are required to part (b). The Authority considers that the matters covered by UMC would be expected to be dealt with in any consultation process between TPI and the operator and the focus in the TMG should be on providing for an effective consultation process to occur.
184. In addition to its advice in relation to part (b) above, PwC also recommended that part (b) be replaced with the fourth paragraph of section 3.5 of WNR’s 2006 TMG. The Authority does not see this as necessary, as the additional words in WNR’s

paragraph (relating to notifying operators when possession of the network is required for emergency or force majeure events) are included in the subsequent part (a) of this section of TPI's TMG.

185. With regard to part (c) of this section of TPI's TMG, the Authority notes PwC's recommendation to replace TPI's 'reasonable endeavours' with WNR's "best endeavours'. The Authority agrees with this recommendation.
186. The Authority also notes that under the equivalent section of WNR's 2006 TMG (section 3.5, first paragraph on page 11), WNR acknowledges the Authority's powers, under section 34A of the Act, in relation to WNR hindering or preventing access to the network by an operator.
187. Section 34A of the Act is relevant, in the event that an operator believed that a railway owner was unnecessarily using its powers to take possession of the network to undertake works in such a way as to favour one operator over another. In the case of a vertically integrated railway owner, such as TPI, this could take the form of favouring its above-rail operation over a third party operator. The Authority considers that a statement, similar to that in WNR's 2006 TMG, should be included in this section of TPI's TMG in order to ensure that both TPI and operators are aware of the provisions of section 34A of the Act.

Consultation Regarding Possessions

TPI's Proposal

188. Under this section, TPI has set out the details of the consultation process which it will undertake with operators in relation to network possessions.

Public Submissions

189. The NWIOA (page 12) and UMC (page 9) both commented that they had a preference for TPI to:

Publish a twelve month network possession plan for planned maintenance, enhancements and expansion work together with the MTP so that they can reasonably anticipate planned closures, their duration and location. In this way the mine will be able to mirror the availability of the railway optimizing mine maintenance and production to everyone's benefit.

190. The ARTC (page 10) provided comments consistent with those of the NWIOA and UMC in relation to the need for TPI to provide a long range forecast of its planned possession requirements for repairs, maintenance and upgrades. The ARTC noted that:

WestNet clearly outlines its long range possession management process along with the method for communication and consultation with operators in its TMG. Where a specific train path is expected to be affected details should be made available to the operator at the earliest practical time.

With vertical integration there is the possibility for an access provider to develop a maintenance program giving some advantage to a related operator over a third party operator. This has the potential to impact performance significantly if repeated regularly.

191. The NWIOA (page 12) and UMC (page 9) submitted that the following changes should be made to this section of TPI's TMG:
 - All possessions should be published.

- There should be a rolling 3 monthly review of possessions by a consultative committee to be headed by the TPI Head of Rail.
 - TPI should provide a revised daily/weekly train plan (DWTT) so that operators can review the impact on their services.
 - Notice of possessions for maintenance activities should be to all operators (not just operators considered by TPI to be affected by the possession).
192. Hancock (ACIL) (page 26) commented that TPI should provide 2 weeks notice, consistent with WestNet, where TPI is to take possession of the network for maintenance activities for periods between 6 and 48 hours (and where service entitlements are affected). TPI does not specify any prior notice period.
193. Hancock (ACIL) also considered that where TPI is to take possession of the network for maintenance activities for periods beyond 48 hours (and where service entitlements are affected) the notice period should be 6 months, consistent with WestNet, rather than the 3 months provided for by TPI.
194. Hancock (ACIL) added a further comment, to the effect that TPI did not specify the content of its notices whereas WestNet specified that its notices would describe the extent and nature of maintenance and upgrading works, the potential effect on train paths and the alternative arrangements proposed. Hancock (ACIL) considered that TPI's notices should contain similar information.

Pricewaterhouse Cooper's (PwC) Advice

195. PwC advised that this section of TPI's TMG was similar to the second part of section 3.5 of WNR's 2006 TMG. However, PwC pointed out that there were differences in TPI's proposal which had been identified in by Hancock (ACIL). These were as follows:
- Part (d)(ii) provides no prior notice to operators. In WNR's 2006 TMG a minimum two week prior notice period is provided under section 3.5.
 - Part (e) provides for at least three months notice to operators. In WNR's 2006 TMG this notice period is at least six months under section 3.5.
196. PwC also considered the comments by the NWIOA and UMA in relation to a twelve month network possession plan being desirable for TPI. PwC considered that a requirement in TPI's TMG of six months notice for major maintenance activities, as set out in WNR's 2006 TMG, should largely address the concerns of these parties.
197. PwC recommended that parts (d) and (e) of this section of TPI's TMG should be amended to make the notice periods consistent with the equivalent notice periods in section 3.5 of WNR's 2006 TMG.
198. In relation to the changes suggested by the NWIOA and UMC, as outlined under the four dot points above, PwC advised that these suggestions go beyond the commitments to operators outlined in WNR's 2006 TMG and there did not appear to be a strong case for such commitments to be broadened under TPI's TMG. However, PwC recommended that one of these suggestions (notice of possessions being provided to all operators) should be implemented in TPI's TMG on the basis that it would seem to represent a simple change that could be implemented at negligible cost and could produce potential benefits to all operators in contingency planning.

199. In regard to the suggestion from Hancock (ACIL) that TPI include the same requirement for specific detail to be provided in notices, as set out in WNR's 2006 TMG, PwC advised that it did not consider it essential that such a clause be added to TPI's TMG.

Authority's Assessment

200. The Authority notes that this section of TPI's TMG is similar to the second part of section 3.5 of WNR's 2006 TMG.
201. The Authority has considered the issue of TPI providing a twelve month plan of network possessions, as suggested by the NWIOA and UMC. The Authority agrees with the advice of PwC to the effect that a commitment of six months notice for major maintenance works on the network, consistent with WNR's 2006 TMG is appropriate.
202. The Authority agrees with PwC's recommendations that parts (d) and (e) of this section of TPI's TMG should be amended to make the notice periods consistent with the equivalent notice periods in section 3.5 of WNR's 2006 TMG.
203. With regard to the further suggestions by the NWIOA and UMC which involve a broadening of commitments to operators beyond those in WNR's 2006 TMG, the Authority agrees with the advice of PwC that there is insufficient justification to extend TPI's commitments to operators in this area beyond the arrangements set out under WNR's 2006 TMG.
204. The Authority notes that PwC, nevertheless recommended that one of these suggestions (notices of possessions being provided to all operators rather than just affected operators) should be incorporated into this section of TPI's TMG. While the Authority can see the potential benefit this may have in terms of transparency for operators, the Authority does not consider that this would be appropriate as the primary purpose of the notice is to inform the affected operators and allow a subsequent consultation process to occur with these specific operators.
205. However, the Authority considers that as TPI's TMG will (unlike WNR's 2006 TMG) involve the management of cyclic train paths, operators having cyclic train paths allocated on TPI's network have a need to be informed on future possessions as the planning of their longer term cyclic train path requirements may be affected by such possessions. The Authority considers that TPI's TMG should contain a provision requiring TPI to publish on its web site all notices issued to affected operators involving major maintenance or upgrading possessions in excess of 48 hours
206. The Authority noted PwC's advice that it did not agree with the suggestion from Hancock (ACIL) that TPI include the same requirement for specific detail to be provided in notices, as set out in WNR's 2006 TMG. The Authority considers that it is important for affected operators to be provided with all the information required under WNR's notices, namely the nature and duration of the network possession, the impact on the operator's train path and the alternative arrangements proposed. While some or all of this information would be expected to be passed onto affected operators during consultation with the railway owner subsequent to the notice, the railway owner should provide the operator with as much information as possible in the notice itself.

Draft Determination**Required Amendment 9**

Section 4.1 (headed 'Network repairs, maintenance and upgrades') of TPI's proposed (revised) TMG should be amended as follows:

- Delete the words "use reasonable endeavours to" under part (b) of section 4.1.1 (third paragraph) and replace with "at all times".
- Delete the word "reasonable" under part (c) of section 4.1.1 and replace with "its best".
- Insert a new paragraph at the end of section 4.1.1 which states: "TPI acknowledges that section 34A of the *Railways (Access) Act 1998* provides the ERA with powers should it believe that TPI's conduct would be construed as hindering or preventing an Operator's access to TPI's railway network".
- Delete the words under part (d)(i) of section 4.1.2 and replace with "it will give a minimum of two weeks notice to affected Operators".
- Delete the words "give as much notice as is reasonably practical and in doing so will endeavour to provide at least three months notice" under part (e) of section 4.1.2 and replace with "at least six months notice".
- Insert an additional sentence at the end of the paragraph under part (e) of section 4.1.2, as follows: "TPI will publish this notice on its web site on the date it is issued to affected Operators".
- Insert a new paragraph (part (g)) at the end of section 4.1.2, as follows: " g) any notice given under this policy will describe:
 - (i) the extent and nature of the works,
 - (ii) the potential effect on Train Paths, and
 - (iii) what alternative arrangements are proposed."

Managing Infrastructure Issues: Management of emergencies or other incidents (Section 4.2)

TPI's Proposal

207. This section of TPI's TMG describes the procedures proposed to be followed by TPI in liaising with operators in the event of an emergency which requires it to close all or part of its network.

Public Submissions

208. No comments were provided in submissions.

Pricewaterhouse Cooper's (PwC) Advice

209. PwC advised that this section of TPI's TMG is similar to section 3.6 of WNR's 2006 TMG.

210. PwC considered this section to be appropriate.

Authority's Assessment

211. The Authority notes that this section is effectively the same as section 3.6 of WNR's 2006 TMG.

212. The Authority agrees with PwC that this section is appropriate.

Network Blockages

TPI's Proposal

213. TPI has set out, under this section, arrangements for dealing with the issue of a blockage of the network due to a train failure. These arrangements cover the recovery of a failed train and clearance of the network.

214. This section also notes that TPI may request another operator to assist in clearing a blockage and that such an operator "will not unreasonably withhold its consent".

Public Submissions

215. Both the NWIOA (page 13) and UMC (page 10) suggested that the following text (from section 2.2 of the WNR's 2006 TMG) be included in this section of TPI's TMG:

An operator is not required to provide assistance if it will incur cost and risk unless agreement is reached on how the costs and risks will be shared. Agreement on the terms and conditions for providing assistance may be negotiated within the Access Agreement.

216. Hancock (ACIL) (page 26) noted that the TPI provisions under this section were similar to those of WestNet but also highlighted the above clause as lacking in TPI's TMG compared to WestNet's TMG..

217. TPI at page 2 of its supplementary submission, commented that:

An operator must assist in clearing the Network (as directed by the Train Controller) to ensure the minimum disruption to all operators. TPI rejects any suggestion that an operator does not need to provide any assistance when a train is failed/disabled in the section. In a multiple operator rail environment, it is contingent upon all users to take the necessary actions to reduce operational downtime on the network.

Pricewaterhouse Cooper's (PwC) Advice

218. PwC noted that this section of TPI's TMG is similar to section 2.2 of WNR's 2006 TMG.

219. PwC agreed with TPI's comments in its supplementary submission to the effect that its TMG should include an obligation for an operator (other than the operator whose train has failed) to assist with clearing network blockages. However, PwC considered that such obligations should be reasonable.

220. PwC advised that section 2.2 of WNR's 2006 TMG sets out an obligation for such an operator to assist with network blockages subject to, if the operator will incur cost and risk in providing assistance, agreement being reached on how the costs

and risks will be shared. Such agreement could be provided in the access agreement.

221. PwC advised that section 2.2 of WNR's 2006 TMG set out clearer and potentially more balanced and reasonable obligations on operators (other than the operator whose train has failed) to assist in clearing network blockages. PwC recommended that the relevant WNR provisions should be incorporated into TPI's TMG.

Authority's Assessment

222. The Authority notes that this section of TPI's TMG is similar to section 2.2 of WNR's 2006 TMG.
223. The Authority also notes that the main area of difference between these sections of the TPI and WNR TMGs relates to the obligations imposed on operators, other than the operator whose train has failed, to assist in clearing the network blockage.
224. With regard to the comments in submissions from the NWIOA, UMC and Hancock (ACIL), the Authority agrees with PwC that these comments are not indicating a reluctance for operators to assist under such circumstances, as inferred in TPI's comments in its supplementary submission. Rather, these parties have indicated a preference for the wording under WNR's 2006 TMG which makes it clear that an agreement on the sharing of costs and risks is required prior to such assistance.
225. The Authority considers that TPI's comments in its supplementary submission do not acknowledge any requirement for TPI to first enter into an agreement with operators on costs or risks in the event that such operators (other than the operator whose train has failed) are required to assist in clearing a network blockage. If the operator's train is not the train which has failed and caused the network blockage, the Authority's view is that such an operator is entitled to have regard to its costs and risks should it be required to assist in clearing the blockage caused by another operator. Further, the Authority considers that such arrangements should be a consideration of the railway owner at the time access agreements are negotiated. Schedule 3 of the Code provides a list of matters for which provision is to be made in an access agreement under the Code and such arrangements could be contemplated under either item 7 ('train control, operations and management') or item 13 ('emergencies and service interruptions').
226. The Authority agrees with PwC's recommendation to replace the paragraph in this section of TPI's TMG dealing with the above matter (second paragraph) with paragraphs two and three of section 2.2 of WNR's 2006 TMG.
227. The Authority notes that this section of TPI's TMG also incorporates the matters covered under section 2.3 of WNR's 2006 TMG relating to the alternative recovery options to clear a failed train from the network. In this regard, this section is similar to WNR's section 2.3 except for the mention in WNR's 2006 TMG that the operator (of the failed train) will be consulted on these recovery options. Accordingly, the Authority considers that these additional words need to be added to this section of TPI's TMG.

Draft Determination**Required Amendment 10**

Section 4.2 (headed 'Management of emergencies or other incidents') of TPI's proposed (revised) TMG should be amended as follows:

- Replace the second paragraph under 4.2.1 (beginning "TPI may request...") with wording similar to that in the second and third paragraphs of section 2.2 of WNR's 2006 TMG.
- Amend the last sentence in the first paragraph under 4.2.1 as follows: "...consideration may also be given, in consultation with the Operator of the failed train, to:"

Managing Infrastructure Issues: Train activities following an incident or an emergency (Section 4.3)

TPI's Proposal

228. TPI has proposed that, following a major delay which impacts on services on the network, TPI will ensure that trains resume service in the order that they were scheduled to run prior to the delay.

Public Submissions

229. Both the NWIOA (page 13) and UMC (page 10) suggested that the following text be included to this section of TPI's TMG:

To facilitate the communications process, the Operator and TPI shall provide for a 24 hour communications link unless otherwise agreed.

All affected Operators will be consulted as to their positions and needs including factors such as crewing arrangements; sensitive freight; and shipping or production requirements.

Pricewaterhouse Cooper's (PwC) Advice

230. PwC advised that this section of TPI's TMG is broadly similar to section 3.4 of WNR's TMG.
231. PwC considered the text proposed to be included in this section of TPI's TMG, by the NWIOA and UMC, to be based on provisions within WNR's TMG. PwC recommended the inclusion of the proposed text.

Authority's Assessment

232. The Authority notes that the second paragraph of the text recommended by PwC to be included in TPI's TMG, is the same as the wording under section 3.4(i) of WNR's TMG. The Authority agrees that this wording is appropriate as the particular circumstances of each operator, including freight sensitivity, need to be taken into account by the railway owner in rearranging services following a major delay on the network.

233. In regard to the first paragraph under PwC's recommendation, the Authority notes that this comes from section 2.4 of WNR's TMG dealing with consultation protocols between WNR and operators. The issue of consultation arrangements between TPI and operators has been raised under earlier sections by UMC. As previously stated, the Authority agrees that communication and consultation protocols between TPI and operators need to be included in TPI's TMG, similar to the protocols under section 2.4 of WNR's 2006 TMG. This matter has been dealt with later in this draft determination.

Draft Determination

Required Amendment 11

Section 4.3 (headed 'Train activities following an incident or an emergency') of TPI's proposed (revised) TMG should be amended by continuing the sentence comprising this paragraph as follows:

"... causing the delay if practical, subject to consultation with Operators as to their positions and needs including factors such as crewing arrangements, sensitive freight and shipping or production requirements."

Managing Infrastructure Issues: Management of issues affecting daily operations (Section 4.4)

TPI's Proposal

234. TPI has proposed arrangements for managing daily issues which may arise during the course of operating the network.
235. These arrangements include TPI's commitment to network maintenance and the imposition of speed and weight restrictions on operators when required.
236. This section makes it clear that TPI will maintain the network in accordance with obligations set out in the access agreements.

Public Submissions

237. The NWIOA (page 13) and UMC (page 10) repeated the same comments they had raised under the previous section (section 4.3) of TPI's TMG above.

Pricewaterhouse Cooper's (PwC) Advice

238. PwC advised that this section of TPI's TMG is generally consistent with section 3.7 of WNR's TMG.
239. PwC noted that the key difference between the TPI and WNR TMGs is that WNR's 2006 TMG sets out a requirement for WNR to maintain its network to the highest of: 1) the standard existing at commencement of the access agreement, or 2) the minimum standard required to maintain WNR's accreditation, or 3) any other standards as agreed between the parties. In comparison, TPI's TMG requires TPI to maintain its network in accordance with the obligations in its access agreements.

240. PwC considered that a reasonable level of equivalence between the TPI and WNR TMGs would be achieved if TPI and operators agreed on appropriate key performance indicators to be included in their access agreements.

Authority's Assessment

241. The Authority notes that this section of TPI's TMG is generally similar to section 3.7 of WNR's TMG apart from the difference in obligations regarding maintenance of the network as outlined by PwC.
242. The Authority has considered the comments by the NWIOA and UMC and considers that the matters raised have been deal with in the previous section.
243. In regard to PwC's advice on the inclusion of KPIs, the Authority notes that access agreements have provision for the incorporation of KPIs and therefore it would be expected that KPIs would form part of the arrangements in access agreements to which TPI's maintenance standards would need to adhere under the provisions of this section of its TMG. The issue of KPIs has been dealt with later in this draft determination.
244. In the Authority's view, this section of TPI's TMG is appropriate subject to the inclusion of an additional requirement, related to the requirements of the Safety Act, which would make the TMG effectively consistent with section 3.7 of WNR's 2006 TMG. This requirement relates to minimum standards for the network under the requirements of the Safety Act.

Draft Determination

Required Amendment 12

Section 4.4 (headed 'Management of issues affecting daily operations') of TPI's proposed (revised) TMG should be amended by continuing the sentence comprising the last paragraph on page 16, as follows:

"TPI will maintain the Network (but only in so far as the Network is relevant to the Operator's Train Paths) to the highest level consistent with its obligations under Access Agreements or the requirements on TPI under the *Rail Safety Act 1998*."

Managing Infrastructure Issues: Disputes (Section 4.5)

TPI's Proposal

245. This section of the TPI's TMG outlines the process applicable for the resolution of disputes.
246. The process is described as follows:
- Any disputes arising in relation to any aspect of these guidelines will be managed in accordance with the Access Agreement.

Public Submissions

247. The NWIOA (page 13), UMC (page 10) and Hancock (ACIL) (page 26) commented that the dispute resolution provisions contained in Westnet's TMG should be included in TPI's TMG.

Pricewaterhouse Cooper's (PwC) Advice

248. PwC advised that this section 4.5 of TPI's TMG is comparable with the first part of section 4 of WNR's 2006 TMG.
249. PwC advised that section 4 of the WNR TMG notes that section 25 of the Code is available to entities seeking access and also outlines a 3-stage process for dispute resolution to apply once access agreements are in place.
250. PwC advised that it considers it appropriate that wording similar to that in the first part of section 4 (up to and including 4(c)) of WNR's TMG be included under this section of TPI's TMG.

Authority's Assessment

251. The Authority notes that this section of TPI's TMG does not explain that an access seeker can refer disputes to arbitration under the Code. In addition, this section does not set out a process for the resolution of disputes under access agreements.
252. The Authority agrees with PwC to the effect that both these elements need to be included in TPI's TMG in a manner consistent with the arrangements set out under the first part of section 4 of WNR's TMG.
253. Further, the Authority considers that this section should be consistent with the equivalent section under TPI's TPP.

Draft Determination

Required Amendment 13

Section 4.5 (headed 'Disputes') of TPI's proposed (revised) TMG should be amended to be equivalent to the process described under section 4.2 of TPI's proposed (revised) TPP as amended under Recommendation 9 of the Authority's Draft Determination on TPI's proposed (revised) TPP.

Appendix A: Definitions

TPI's Proposal

254. TPI has outlined eight pages of definitions of terms used in its TMG under Appendix A.

Public Submissions

255. UMC commented (page 10) that the definition of operator should be changed to the following:

Operator means the Operator or operators which have access to the TPI Network under an Access Agreement or have made an application for Access under Section 8 of the Code.

256. Hancock (ACIL) noted (page 27) that TPI had provided a comprehensive set of definitions which was to be welcomed.

Pricewaterhouse Cooper's (PwC) Advice

257. PwC recommended that TPI should provide a complete list of the definitions used in its TMG which should be consistent with the definitions in the Code and the Act and with the definitions in WNR's 2006 TMG where appropriate.
258. In particular, PwC noted that TPI had not defined the terms 'Manager', 'Train Control and Scheduling', 'Master Train Plan' and 'Network Rules'.

Authority's Assessment

259. The Authority agrees with PwC's recommendations for TPI to provide a complete list of all the terms used in its TMG and for these to be consistent with the Code and the Act and, where appropriate, WNR's 2006 TMG.
260. Consistent with PwC's advice, the Authority has identified a number of terms used in TPI's TMG in its required amendments outlined above, which require definitions to be provided or which require more detail or changes to the existing definitions.
261. The Authority also notes that where terms in TPI's TMG have been used previously under its TPP, such terms have the same definitions as in its TPP, subject to the Authority's required amendments in its Draft Determination on TPI's TPP.
262. In regard to UMC's comment to the effect that the term 'TPI' be added to TPI's definition of operator prior to the word 'Network', the Authority notes that UMC made the same comment on TPI's definitions in its TPP. As the Authority required under Amendment 10 in its Draft Determination on TPI's proposed (revised) TPP that the term 'Network' be changed to 'TPI's Railway Network' this dealt with UMC's issue. Similarly, by requiring TPI's TMG definitions to be equivalent to its TPP definitions, as above, UMC's issue is also dealt with in TPI's TMG.

Draft Determination**Required Amendment 14**

Appendix A (headed 'Definitions') of TPI's proposed (revised) TMG should be amended as follows:

- Include a complete list of all the terms used in the TMG which might reasonably be expected to require a definition.
- All definitions should:
 - Be consistent with the definitions in the Act and the Code.
 - If not defined in the Act and the Code be consistent with the definitions under section 7 of WNR's 2006 TMG where appropriate.
 - Where the same term has been used and defined in TPI's proposed (revised) TPP the TMG should use the same definition subject to any relevant required amendments under the Authority's Draft Determination on TPI's proposed (revised) TPP.

Appendix B: Decision-Making Matrix**TPI's Proposal**

263. TPI has outlined under this section, its arrangements governing the principles it will apply to the management of trains on its network
264. A decision-making matrix has been included in this section which provides information on the order of priority which will apply where two trains are competing for priority on TPI's network.

Public Submissions

265. The NWIOA commented (page 15) that Rules 2, 3 and 4 on page 27 refer to the port. The NWIOA believes that such references are inappropriate in TPI's TMG.
266. UMC noted (page 10) that its preference was to review TPI's port access arrangements before commenting on this section.

Pricewaterhouse Cooper's (PwC) Advice

267. PwC advised that this section of TPI's TMG was generally similar to section 3.3 of WNR's 2006 TMG, with the exception of the priorities given to port operations under TPI's TMG.
268. PwC recommended that the references in this section of TPI's TMG to the port operator and the words "acting to maximise the efficiency of the supply chain as a whole" should be deleted in order to remove uncertainty arising from, and the overriding priority given to, port operations.

Authority's Assessment

269. The Authority notes PwC's comments in relation to the similarity between this section of TPI's TMG and section 3.3 of WNR's 2006 TMG.
270. The Authority agrees with the comments by the NWIOA to the effect that it is inappropriate for TPI's TMG to include references to the requirements of its port operations. PwC's recommendations are consistent with this view.
271. The Authority has also considered the differences between section 3.3 of WNR's 2006 TMG and this section of TPI's TMG. The Authority considers that there are some important matters mentioned in WNR's 2006 TMG but not in TPI's TMG. These matters relate to the following:
- Third paragraph under section 3.3 of WNR's 2006 TMG on page 7. The same paragraph should be included in TPI's TMG with 'Access Manager' replaced in the case of TPI by ' Manager, Train Control and Scheduling'.
 - Last paragraph under section 3.3 of WNR's 2006 TMG on page 10. The same paragraph should be included in TPI's TMG with 'Access Manager' replaced in the case of TPI by ' Manager, Train Control and Scheduling'.
 - The four paragraphs under the heading "General Principles for Train Management' under section 3.3 of WNR's 2006 TMG on page 9. These four paragraphs should also be included in TPI's TMG.
 - Part (1) of the 'Notes' under section 3.3 of WNR's 2006 TMG at the bottom of page 9 should be included in TPI's TMG.

Draft Determination**Required Amendment 15**

Appendix B (headed 'Decision –Making Matrix') of TPI's proposed (revised) TMG should be amended as follows:

- Insert two new paragraphs at the end of the section on Appendix B on page 26 as follows:
 - The first new paragraph should be the same as the third paragraph under section 3.3 of WNR's 2006 TMG on page 7 except that 'Access Manager' should be replaced with 'Manager, Train Control and Scheduling'.
 - The second new paragraph should be the same as the last paragraph under section 3.3 of WNR's 2006 TMG on page 10 (part(vi)) except that 'Access Manager' should be replaced with 'Manager, Train Control and Scheduling'.
- Insert the four paragraphs at the top of the matrix on page 9 of WNR's 2006 TMG (under the heading 'General Principles for Train Management') into the top of the matrix on page 27 under the same heading.
- Delete the words " Priority may be dictated to either service depending on instructions received by the Train Controller from the Port (acting to maximise the efficiency of the supply chain as a whole). In the absence of such a direction" in Rules 2, 3 and 4 on page 27.
- Add a new part (1) under the heading 'Notes' at the bottom of page 27 equivalent to part (1) of section 3.3 of WNR's 2006 TMG under the "Notes' heading at the bottom of page 9.

ADDITIONAL ISSUES

272. The Authority has noted that there are a number of further matters not covered in TPI's TMG which it considers should be included in this TMG. These matters are dealt with below.

Additional Issue 1: Performance Monitoring (KPIs)**TPI's Proposal**

273. TPI's TMG did not include provision for performance monitoring utilising KPIs.

Public Submissions

274. The NWIOA (page 13) and UMC (page 11) both considered that TPI's TMG should contain a section dealing with the development of KPIs and that this section should be similar to that under section 4 of WestNet's TMG. Hancock (ACIL) (page 26) supported the inclusion of a section on KPIs in TPI's TMG.

Pricewaterhouse Cooper's (PwC) Advice

275. PwC noted that TPI's TMG had not mentioned KPIs but that that a process for the development of KPI's had been set out in WNR's 2006 TMG in the second half of section 4.
276. PwC advised that it considered it important that the TMG provided for the maintenance of railway infrastructure to the standard required by operators and therefore it was necessary to have in place a process for agreeing on KPIs. PwC considered that such a process was a key element in ensuring the regime is consistent with the interests and requirements of operators.
277. PwC recommended that a process for the development of KPIs between TPI and operators should be included in TPI's TMG based on the relevant provisions under section 4 of WNR's TMG.

Authority's Assessment

278. The Authority has considered the submissions on this issue and the advice from PwC supporting these submissions and agrees that TPI should include a section in its TMG dealing with the development of KPI's between TPI and operators to form part of the access agreements.
279. The Authority also agrees with PwC's recommendation that this new section in TPI's TMG should be based on the relevant paragraphs of section 4 of WNR's 2006 TMG dealing with the development of such KPIs.

Draft Determination

Required Amendment 16

TPI's proposed (revised) TMG should be amended as follows:

- Include a new section (section 4.6) headed 'Performance Monitoring (KPIs)'
- Outline arrangements under this new section 4.6, for the manner in which TPI will agree with operators on Key Performance Indicators (KPIs) to be included in access agreements. These arrangements should be similar to those set out under section 4 of WNR's 2006 TMG commencing from the beginning of the seventh paragraph (which starts with "No later than ...") on page 13 to the end of section 4.

Additional Issue 2: Protocols for Consultation with Operators

TPI's Proposal

280. TPI's TMG did not include specific arrangements for consultation between TPI and operators to facilitate the exchange of information between these parties on various issues as may arise under the TMG.

Public Submissions

281. UMC has commented that that a 24 hour communications link should be established between operators and TPI as is provided for in WestNet's TMG.

Pricewaterhouse Cooper's (PwC) Advice

282. PwC did not deal with this matter.

Authority's Assessment

283. The Authority considers that it is necessary, in order to ensure that the TMG provisions work in an efficient and fair manner, for consultation protocols to be established between TPI and operators.

284. The Authority considers that section 2.4 of WNR's 2006 TMG provides a reasonable outline of such consultation arrangements. Therefore, the Authority's view is that TPI's TMG should include a section on the consultation protocols to be established between TPI and operators along the lines outlined under section 2.4 of WNR's TMG.

Draft Determination**Required Amendment 17**

TPI's proposed (revised) TMG should be amended as follows:

- Include a new section (section 4.7) headed 'Protocols for Consultation with Operators'
- Outline arrangements under this new section 4.7, for the manner in which TPI will agree on the arrangements for consultation protocols with operators. These arrangements should be similar to those set out under section 2.4 of WNR's 2006 TMG.

Additional Issue 3: Consistency between Access Agreements and the TMG**TPI's Proposal**

285. TPI's TMG did not contain a commitment that sections of access agreements which relate to requirements set out in the TMG are referenced to the relevant clauses in the access agreement.

Public Submissions

286. UMC (page 6) suggested that the following words be included in the TPI TMG:

TPI will ensure where possible, that those sections of an access agreement which relate to requirements set out in the TPP or TMG documents are referenced to the relevant clauses in these documents to ensure consistency is maintained between the access agreement and these documents.

Pricewaterhouse Cooper's (PwC) Advice

287. PwC advised that WNR's TMG does not contain a commitment that sections of access agreements which relate to requirements set out in the TMG are referenced to the relevant clause of the document. However, WNR's TPP (section 7) provides a consistency provision in respect of both the TPP and TMG.
288. PwC advised that it considers that these issues would be dealt with as a matter of course by TPI in developing access agreements. PwC nonetheless considers that the wording suggested by UMC would provide a useful reference during access negotiations and recommended that these words be included in TPI's TMG.

Authority's Assessment

289. The Authority agrees with PwC's recommendation that wording similar to that under section 7 of WNR's 2006 TPP be included in TPI's TMG in order to ensure consistency between the provisions in TPI's TMG and its access agreements with operators under the Code.

Draft Determination**Required Amendment 18**

TPI's proposed (revised) TMG should be amended as follows:

- Include a new section (section 4.8) headed 'Consistency between Access Agreements and the TMG'
- Outline arrangements under this new section 4.7, for the manner in which TPI will ensure consistency between its access agreements under the Code and its TMG. These arrangements should be similar to those set out under section 7 of WNR's 2006 TPP.

Additional Issue 4: Compliance and Review**TPI's Proposal**

290. TPI's TMG did not include provisions for compliance and review.

Public Submissions

291. The NWIOA (page 14) and UMC (page 11) considered that TPI's TMG should contain a section on compliance and review similar to section 5 of WestNet's TMG.

Pricewaterhouse Cooper's (PwC) Advice

292. PwC recommended that TPI's TMG should include a five year review provision and should contain similar provisions to those set out under section 5 of WNR's 2006 TMG.

Authority's Assessment

293. The Authority agrees on the need for periodic reviews of TPI's TMG to allow all parties the opportunity of providing their views on the effectiveness of the TMG.
294. However, the Authority does not concur with PwC's recommendation of a review after five years. The Authority believes that the first review of TPI's TMG should occur two years after the date when all the regulatory instruments required under the Act and the Code have been approved by the Authority. This is the same period which the Authority applied in the case of the first review of WNR's 2003 TMG.
295. In terms of a compliance regime, the Authority has recently carried out a review of the compliance requirements under the Code. As a result of this review, the Authority's view is that while the Act allows the Authority to look at operational performance of a railway network in the course of performing its functions, the Authority does not have a general function of monitoring the operational performance of the railway network and its monitoring functions do not extend beyond monitoring a railway owner's compliance with the Act and the Code.
296. The review indicated the need for the Authority to undertake independent compliance audits of the railway owner's obligations under the Act and the Code. These audits are currently undertaken on an annual basis for WNR. As a result of this review, these audits will in future be undertaken generally on a two year basis.
297. The Authority considers that TPI's TMG should include a section outlining TPI's compliance and review arrangements along similar lines to the arrangements set out under section 5 of WNR's 2006 TMG, taking into account the changes outlined above.

Draft Determination**Required Amendment 19**

TPI's proposed (revised) TMG should be amended as follows:

- Include a new section (section 4.9) headed 'Compliance and Review'
- Outline arrangements under this new section 4.9, for the manner in which TPI's compliance with its TMG will be monitored by the Authority and the review interval for TPI's TMG. These arrangements should be similar to those set out under section 5 of WNR's 2006 TMG with the exception of the following:
 - First paragraph of WNR's section 5: Delete this paragraph and replace with "The ERA will review the TMG, through a public consultation process, two years after the date when all the regulatory instruments required under the Act and the Code for TPI's railway have been approved by the Authority. TPI will provide the Authority with a proposed revised TMG at the time the review is required to commence the review process"
 - Fourth and fifth paragraphs of WNR's section 5: Delete these paragraphs.
 - Sixth paragraph of WNR's section 5: Delete this paragraph and replace with "The ERA will monitor TPI's compliance with the TMG through an audit of TPI's obligations under the TMG every two years. This audit will be carried out by an independent auditor approved by the ERA, with TPI managing and funding the audit. The scope of the audit will be determined by the ERA. The final audit report will be provided to the ERA and the ERA will publish this report on its web site (excluding confidential information, if any)."

Additional Issue 5: Control and Management of Access to the Network**TPI's Proposal**

298. TPI's TMG did not describe the key obligations of, and warranties to be provided by, the parties to an access agreement in relation to access to the network.

Public Submissions

299. ARTC (page 9) commented that there appeared to be no obligations on the operator to comply with TPI's code of practice requirements in relation to the management of trains on its network and noted that it was not clear why this had been omitted.

Pricewaterhouse Cooper's (PwC) Advice

300. PwC advised that WNR's 2006 TMG describes terms and conditions of access to be provided in the access agreements at section 6, where the basic legal rights and obligations of parties to the access agreements are outlined.
301. PwC recommended that it considers that similar procedures for control and management of access to the network as those set out in section 6.1 of the WNR's 2006 TMG, should be incorporated into TPI's TMG.
302. PwC did not consider it necessary for section 6.2 of WNR's 2006 TMG to be included in TPI's TMG on the basis that these issues are covered under other legislation.

Authority's Assessment

303. The Authority agrees with PwC's recommendation that similar procedures for control and management of access to the network as those set out under section 6.1 of the WNR's 2006 TMG should be incorporated into TPI's TMG.
304. With regard to section 6.2 of WNR's 2006 TMG, the Authority notes that a significant part of this section deals with issues of notification and exchanges of information between WNR and operators in relation to the carriage of dangerous goods and environmental incidents. Such consultation arrangements between the railway owner and operators are not necessarily matters covered under the relevant legislation and the Authority considers that such arrangements are potentially important to the operation of the network and should be included in TPI's TMG.

Draft Determination**Required Amendment 20**

TPI's proposed (revised) TMG should be amended as follows:

- Include a new section (section 5) headed 'Control and Management of Access to the Network'
- Outline arrangements under this new section 5, for the manner in which TPI will set out the obligations and warranties which will apply to TPI and operators in relation to access to the network. These arrangements should be similar to those set out under section 6 of WNR's 2006 TMG (pages 15 to 18).