

The Pilbara Infrastructure Pty Ltd

Final Determination on the  
Proposed (Revised) Train Management  
Guidelines

18 September 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. The Authority's approval is required, pursuant to section 43(2) of the Code, before TPI can put in place its TMG.
5. TPI submitted a revised TMG proposal on 27 February 2009. This TMG proposal is the TMG referred to in this final determination as TPI's proposed (revised) TMG.
6. The Authority issued its draft determination on TPI's proposed (revised) TMG on 30 April 2009. This draft determination listed twenty amendments which were required to be made to TPI's proposal before the Authority could approve this proposal.
7. The Authority has considered TPI's proposed (revised) TMG in conjunction with comments made in submissions to the Authority on TPI's proposal and on the draft determination.
8. Following consideration of the requirements set out under section 41 of the Code, the final determination of the Authority is to approve TPI's proposed (revised) TMG, subject to twenty amendments as listed below.

## LIST OF AMENDMENTS

### 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)".

**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.
- Add the statement “TPI acknowledges the requirement for the provisions of the TMG to adhere to the requirements set out under section 16 of the Code” as the last paragraph under section 1.2.

**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).
- Include at the top of page 5, an additional sub-section following sub-section c as follows; “d) general train operating arrangements for the Network, other than as required to be provided to Operators under the TMG or the Code, relevant to each Operator’s allocated train paths”.
- 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...”).

**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...”).

### 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.

### 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”.

### 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”.

### Required Amendment 9

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

- Add the words “including undertaking such works for reasons related to safety” to the first sentence under section 4.1.1 immediately following the words “...for the purpose of undertaking repairs, maintenance and upgrades”.
- 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 “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 or at least three months notice subject to reaching agreement with all affected Operators to this reduced notice period”.
- Insert an additional sentence at the end of the paragraph under part (e) of section 4.1.2, as follows: “TPI will provide its network possession notices related to these works to affected Operators and also to all other Operators on the same date.”
- 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:

**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 2009 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:”.

**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.”

**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*.”.

**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) Train Path Policy (TPP) as amended under Recommendation 9 of the Authority’s Final Determination on TPI’s proposed (revised) TPP.

**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 2009 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 Final Determination on TPI’s proposed (revised) TPP.

**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 2009 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 2009 TMG on page 9 (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 8 of WNR's 2009 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 2009 TMG under the "Notes' heading at the bottom of page 8.

**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 2009 TMG commencing from the beginning of the seventh paragraph (which starts with "No later than ...") on page 12 to the end of section 4 of WNR's 2009 TMG.

**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 2009 TMG.

**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 2009 TPP.

#### **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 2009 TMG with the exception of the following:
  - First paragraph of WNR's section 5: Delete this paragraph and replace with "TPI agrees to a review of the TMG by the ERA, 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. It is expected that the review will commence on 1 October 2012 and that TPI will provide the ERA with its proposed revised TMG on this date".
  - Fourth paragraph of WNR's section 5: (1) Replace "WestNet" with "TPI". (2) Replace "The ERA will monitor TPI's compliance ..." with "TPI agrees to the monitoring by the ERA of its compliance..." (3) Add the following sentence to the end of this paragraph; "It is expected that the first audit will commence at the end of the 2011-12 financial year".

#### **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 2009 TMG (pages 14 to 16).



## REASONS FOR THE DRAFT DETERMINATION

### BACKGROUND

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. In making this final 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.
15. To assist the Authority in the preparation of its final determination, the Authority engaged a consultant, PricewaterhouseCoopers (PwC) to review TPI's proposed TMG and the public submissions, and provide advice to the Authority. The PwC final report is available on the Authority's web site ([www.era.wa.gov.au](http://www.era.wa.gov.au)).

### DRAFT DETERMINATION

16. The Authority issued its draft determination on 30 April 2009. Twenty amendments were required to be made to TPI's proposed (revised) TMG under the draft determination.
17. The Authority provided a six week public consultation period on its draft determination, from 30 April 2009 to 11 June 2009. Three public submissions were received during this period, from North West Iron Ore Alliance (**NWIOA**), United Minerals Corporation (**UMC**) and TPI. These submissions are available on the Authority's web site ([www.era.wa.gov.au](http://www.era.wa.gov.au)).

## CODE AMENDMENTS

18. Subsequent to the Authority's release of the draft determination on 30 April 2009, amendments to the Code were published in the Government Gazette on 23 June 2009.
19. The Code amendments resulted from a report by the Authority on its review of the Code, provided to the Government in late 2005 pursuant to the Authority's responsibilities under section 12 of the Act, and subsequent public consultation and deliberations by the Government.
20. References to the Code in this final determination refer to the current version of the Code apart from instances where comments made in the draft determination have been incorporated as part of the advice set out by PwC or the assessment set out by the Authority.

## REVISIONS TO WESTNET RAIL'S TMG

21. In June 2009 the Authority approved revisions proposed by WestNet Rail (**WNR**) to its 2006 TMG involving changes to the compliance and review section (Section 5) of the TMG.
22. The changes reflected the outcome of a review by the Authority of compliance arrangements required under the Act and the Code. As a result of this review, the Authority considers that its monitoring role does not include a general function of monitoring the operational performance of the railway network. The Authority believes its functions are only to monitor a railway owner's compliance with the Act and the Code. The Authority also decided that future independent compliance audits would be required generally every two years rather than annually.
23. References to WNR's TMG in this final determination have been changed from WNR's 2006 TMG to WNR's 2009 TMG, to reflect the current version of this document, apart from instances where comments made in the draft determination have been incorporated as part of the advice set out by PwC or the assessment set out by the Authority.

## FINAL DETERMINATION

24. The twenty amendments set out in the draft determination have been listed below. Each of these amendments is followed by:
  - An outline of the comments on the amendment in the public submissions.
  - PwC's advice on the public submission comments.
  - The Authority's assessment of the public submission comments.
  - The Authority's final determination

### **Draft Determination – 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.*

**Public Submissions**

25. No comments were made in the public submissions relating to Amendment 1.

**Authority's Assessment**

26. The Authority confirms its position as set out in the draft determination.

**Final 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.

**Draft Determination – 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)".*

**Public Submissions**

27. No comments were made in the public submissions relating to Amendment 2.

**Authority's Assessment**

28. The Authority confirms its position as set out in the draft determination.

**Final Determination****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)".

**Draft Determination – 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.

### Public Submissions

29. The NWIOA and UMC commented, under the compliance arrangements dealt with under Amendment 19, that TPI’s TMG should include reference to the requirements of section 16 of the Code.

### Authority’s Assessment

30. The Authority has agreed, under the discussion related to Amendment 19, that a reference to the requirements of section 16 of the Code is appropriate and should be included under Amendment 3 in this final determination.
31. Apart from the above change, the Authority confirms its position as set out in the draft determination.

### Final 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.
- Add the statement “TPI acknowledges the requirement for the provisions of the TMG to adhere to the requirements set out under section 16 of the Code” as the last paragraph under section 1.2.

### Draft Determination - Section 1.3

*The Authority noted, under paragraph 71 of its draft determination, that it considered section 1.3 of TPI’s TMG to be appropriate, subject to any definitional amendments required in the draft determination.*

### Public Submissions

32. The NWIOA and UMC both provided similar comments in relation to the Authority’s determination that section 1.3 of TPI’s TMG was appropriate. These comments were to the effect that TPI’s TMG should apply to access seekers who have

negotiated access agreements both within and outside the Code. Both these parties expressed similar comments in their previous public submissions.

### Authority's Assessment

33. The Authority noted in the draft determination, that 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. The Authority therefore considered TPI's statement under section 1.3, to the effect that its TMG will apply to all operators with access agreements under the Code, to be appropriate.
34. The Authority also noted in the draft determination, that the rail access legislation allows TPI to enter into commercial agreements outside of the Code with terms and conditions as agreed between TPI and the access seekers and that, in these circumstances, TPI can choose to negotiate equivalent arrangements to those in its TMG or other arrangements as it considers appropriate.
35. The Authority notes that as a result of the Code being amended, by notice in the Government Gazette of 23 June 2009, a new section (section 4A) has been added to the Code. This section makes clear that a Part 5 instrument (such as the TMG) is only to be taken into account where an access agreement has been made under the Code; and if the railway owner and access seeker choose to negotiate an access agreement outside the Code, nothing in the Code applies to such negotiations or resulting agreement.
36. The Authority confirms its position as set out in the draft determination.

### Draft Determination – 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...").*

### Public Submissions

37. The NWIOA and UMC both provided similar comments, to the effect that TPI's Master Train Plan needed to include additional information on train operating patterns and priority regimes, track maintenance possession, network infrastructure and operating constraints and safe working methods. Both parties expressed similar comments in their previous submissions on TPI's proposed TMG.

38. The NWIOA also suggested that TPI's TMG should include a Network Interface and Co-ordination Plan similar to that that prepared by the ARTC for its Hunter Valley rail network.

#### **PricewaterhouseCoopers's (PwC) Advice**

39. PwC reiterated its previous view, as expressed in its draft report, to the effect that the additional information suggested by the NWIOA and UMC as an inclusion to TPI's Master Train Plan is largely addressed under the provisions of the Code. In addition, PwC noted that TPI's Train Management Guidelines (based on the draft determination) would also include requirements for some of this information to be provided to operators.
40. PwC considered the suggestion by the NWIOA that TPI's TMG should include a Network Interface and Co-ordination Plan similar to that that prepared by the ARTC for its Hunter Valley rail network. In PwC's view, this documentation covered matters dealt with under sections 6 and 7 of the Code and appeared to relate to well established rail network. In the case of a rail network early in its operational life, as in the case of TPI's network, PwC considered that it may not be practical to provide such a level of detail, noting that although it may be desirable to have such details specified up front it considered that the costs of doing so would outweigh the likely benefits at this stage. However, PwC considered that this matter should be included in the review of TPI's TMG in two years time.

#### **Authority's Assessment**

41. The Authority noted in the draft determination that it agreed with the view of PwC to the effect that, under section 7 of the Code, much of this information is required to be provided to the entity seeking access by the railway owner.
42. The Authority notes that PwC has reiterated its earlier advice, in response to the comments by the NWIOA and UMC, to the effect that most of the information suggested for inclusion in TPI's Master Train Plan is covered through the relevant provisions of the Code and under the requirements (based on the draft determination) of TPI's TMG.
43. The Authority also notes that as a result of the Code being amended, by notice in the Government Gazette of 23 June 2009, there is now significantly more information required to be provided by the railway owner for each route section of the network, in published form pursuant to section 7A, as set out under Schedule 2 of the Code.
44. Nonetheless, the Authority considers that the concern raised by the NWIOA and UMC in their submissions on the draft determination relating to the inclusion of train operations information in the Master Train Plan is a relevant issue which is not fully covered under the increased information requirements stipulated in the amended Code.
45. The Authority therefore considers that TPI's Master Train Plan should include general train operating arrangements for the network, other than as set out elsewhere in the TMG or in the Code, relevant to each operator's allocated train paths.
46. In this final determination, Amendment 4 of the draft determination has been revised by the Authority to incorporate the additional requirement outlined above.

47. In relation to the suggestion by the NWIOA, that TPI's TMG should include a Network Interface and Co-ordination Plan similar to that that prepared by the ARTC for its Hunter Valley rail network, the Authority agrees with PwC to the effect that the inclusion of this additional detail in TPI's TMG is not warranted at this stage.
48. The Authority notes that Amendment 19 requires TPI to agree to a review of its TMG by the Authority two years after approval of all TPI's regulatory instruments. The Authority agrees with PwC that it would be appropriate to give further consideration to the issue of a Network Interface and Co-ordination Plan for TPI's TMG, at the time this review is undertaken (expected to commence in October 2012). Operators (assuming there are access agreements under the Code) are likely to have practical experience with TPI's approved TMG by the time of this review.
49. Apart from the revision noted above, the Authority confirms its position as set out in the draft determination.

## Final 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).
- Include at the top of page 5, an additional sub-section following sub-section c as follows; "d) general train operating arrangements for the Network, other than as required to be provided to Operators under the TMG or the Code, relevant to each Operator's allocated train paths".
- 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...").

### Draft Determination – 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...").*

### Public Submissions

50. TPI commented that as a result of Amendment 5, it considered that the additional wording "including for reasons of safety" should be added into the first sentence under section 4.1.1, dealing with possession of the network for repairs, maintenance or upgrading.

### Authority's Assessment

51. As the additional wording suggested by TPI relates to section 4.1.1 of TPI's TMG, this matter has been dealt with under Amendment 9, relevant to section 4.1.1.
52. The Authority confirms its position as set out in the draft determination.

### Final 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...").

### Draft Determination – 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.*

### **Public Submissions**

53. No comments were made in the public submissions relating to Amendment 6.

### **Authority’s Assessment**

54. The Authority confirms its position as set out in the draft determination.

## Final 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.

### Draft Determination – 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".*

## Public Submissions

55. No comments were made in the public submissions relating to Amendment 7.

## Authority's Assessment

56. The Authority confirms its position as set out in the draft determination.

## Final 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".

## Draft Determination – 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”.*

#### **Public Submissions**

57. No comments were made in the public submissions relating to Amendment 8.

#### **Authority’s Assessment**

58. The Authority confirms its position as set out in the draft determination.

## Final 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".

### Draft Determination – 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:
  - (i) the extent and nature of the works,
  - (ii) the potential effect on Train Paths, and
  - (iii) what alternative arrangements are proposed.”

### Public Submissions

59. TPI suggested that the words “including for reasons related to safety” be added to the first sentence under section 4.1.1, immediately following the words “...for the purpose of undertaking repairs, maintenance and upgrades”.
60. TPI also commented that, in relation to the fifth dot point under Amendment 9, it was not always practical to give six months notice when undertaking network repairs, maintenance and upgrades as works may need to commence within six months of becoming evident.
61. In relation to the sixth dot point under Amendment 9, TPI commented that it does not intend to establish a web site and believes that the number of operators will never be so large as to require TPI to communicate with relevant parties through a web site.
62. The NWIOA and UMC have provided similar comments in relation to Amendment 9, along the same lines as previously provided in response to TPI’s proposed TMG. These comments relate to a number of suggested measures to ensure that operators are continuously updated on the competing access needs for TPI’s network.

### PricewaterhouseCooper’s (PwC) Advice

63. PwC considered that the issue raised by TPI, in relation to an inability to always provide six months notice of repairs or upgrading works on its network, was reasonable. PwC suggested that where it was not practical for TPI to give at least six months notice to operators, the notice period should be reduced to the extent practicable.
64. In relation to TPI’s comment that it would not be establishing a web site and did not consider there was a need to communicate notices to operators in the circumstances set out under the sixth dot point of Amendment 9, PwC noted that if such notices were not published on a web site, TPI should notify operators by some other form of written communication to be received by operators on the date that the notice is made.
65. With regard to the comments by the NWIOA and UMC, to the effect that TPI’s TMG should include additional measures aimed at ensuring that operators are continuously updated on the competing access needs for TPI’s network, PwC considered that the draft determination had addressed many of the relevant issues. In relation to the proposed additional measures, PwC considered that the

short term costs of adopting such measures may exceed the benefits and suggested that this was a matter which should be considered further when TPI's TMG was reviewed in two years time.

### Authority's Assessment

66. In relation to TPI's suggested additional wording for the first sentence under section 4.1.1, the Authority agrees in principle with the addition but considers that, to ensure consistency, this additional wording should be "including undertaking such works for reasons related to safety."
67. Amendment 9 in this final determination has been revised to reflect the above change.
68. With regard to TPI's comment on the fifth dot point under Amendment 9, the Authority noted that under the draft determination, the six month notice period to operators was based on WNR's 2006 TMG provisions for similar works. The Authority also notes that this required notice period is not intended to apply to all repairs, maintenance and upgrades which TPI may wish to undertake on its network but, rather, would apply only to major maintenance activities extending beyond 48 hours or where an upgrade will require changes over a long period of time. Such works are significant undertakings and would form part of TPI's long term planning for major maintenance and upgrades to its network.
69. The Authority notes PwC's view on this issue, but does not consider that reducing the notice period for such works from six months to 'as much notice as is practicable' is appropriate, based on the likely impact of such major works on operators. The Authority notes that such major works require an appropriate level of planning prior to undertaking the works and considers that TPI should be able to incorporate the required six month notice period into such plans. However, the Authority also accepts that there may be occasions when TPI may wish to expedite such works, for example if it seeks to fast-track an upgrade of elements of the network.
70. Consequently, the Authority considers that the replacement wording required in the draft determination under the fifth dot point of Amendment 9, being "at least six months notice", should be revised to "at least six months notice or at least three months notice subject to reaching agreement with all affected Operators to this reduced notice period".
71. Amendment 9 in this final determination has been revised to reflect the above change.
72. In relation to TPI's comments on the sixth dot point under Amendment 9, the Authority noted in the draft determination that operators having cyclic train paths allocated on TPI's network would 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. If such operators are not directly affected by such possessions TPI would not be required, under its TMG, to inform such parties of these possessions. The posting of notices on TPI's web site for network possessions involving significant time periods, associated with major maintenance and upgrading activities, would therefore allow all operators to remain adequately informed.

73. In light of TPI's intention, as outlined in its submission, that it will not be establishing a web site, the Authority considers that in order to achieve the objective intended under the sixth dot point of Amendment 9, TPI should be required to provide notices related to network possessions under section 4.1.2 part (e) to all operators rather than just to affected operators. The Authority notes that PwC expressed a similar view.
74. Amendment 9 in this final determination has been revised to reflect the above change.
75. In relation to the suggestion by the NWIOA and UMC, that TPI's TMG should include additional measures aimed at ensuring that operators are continuously updated on the competing access needs for TPI's network, the Authority notes that this matter was dealt with in the draft determination. The Authority's view is similar to that expressed earlier in this final determination in relation to NWIOA's suggested Network Interface and Co-ordination Plan for the TPI network.
76. The Authority agrees with PwC, to the effect that the inclusion of these additional measures in TPI's TMG are not warranted at this time, but notes that Amendment 19 requires TPI to agree to a review of its TMG by the Authority two years after approval of all TPI's regulatory instruments. The Authority considers that this issue should be given further consideration at the time of this review (expected to commence in October 2012). Operators (assuming there are access agreements under the Code) are likely to have practical experience with TPI's approved TMG by the time of this review.
77. With the exception of the above changes, the Authority confirms its position in the draft determination.

## Final Determination

### Required Amendment 9

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

- Add the words "including undertaking such works for reasons related to safety" to the first sentence under section 4.1.1 immediately following the words "...for the purpose of undertaking repairs, maintenance and upgrades".
- 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 "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 or at least three months notice subject to reaching agreement with all affected Operators to this reduced notice period".
- Insert an additional sentence at the end of the paragraph under part (e) of section 4.1.2, as follows: "TPI will provide its network possession notices related to these works to affected Operators and also to all other Operators on the same date."
- 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."

### Draft Determination – 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:”.

### Public Submissions

78. No comments were made in the public submissions relating to Amendment 10.

### Authority’s Assessment

79. The Authority confirms its position as set out in the draft determination.

### Final 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 2009 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:”.

### Draft Determination – 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.”.*

### Public Submissions

80. TPI commented that regarding Amendment 11, additional wording comprising the words “to the overall impact on the network” should be added immediately following the words “...if practical, subject” in the fourth line of the paragraph under section 4.3.

### PricewaterhouseCooper’s (PwC) Advice

81. In relation to TPI’s suggested inclusion, PwC considered that the meaning of the additional words suggested by TPI was unclear. In light of this, PwC was uncertain as to how the suggested amendment would impact on the rights of operators and therefore recommended that the Authority does not adopt such a change.

**Authority's Assessment**

82. The Authority has considered the additional wording suggested by TPI and agrees with the view expressed by PwC.
83. Apart from the meaning of the additional wording being unclear, the Authority considers that this additional wording does not appear to be necessary as the words "if practical" mean that if it is practical for TPI to operate its network in such a way as to resume train operations based on the priority order set out under section 4.3 then it would be required to do so. In assessing whether it is practical to resume services in this way, TPI would consider any issues of relevance related to the operation of its rail network.
84. The Authority confirms its position as set out in the draft determination.

**Final 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."

**Draft Determination – 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."*

**Public Submissions**

85. No comments were made in the public submissions relating to Amendment 12.

**Authority's Assessment**

86. The Authority confirms its position as set out in the draft determination.

## Final 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*."

## Draft Determination – 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.*

## Public Submissions

87. No comments were made in the public submissions relating to Amendment 13.

## Authority's Assessment

88. The Authority confirms its position as set out in the draft determination apart from a change to Amendment 13 referring to the Authority's final determination on TPI's TPP rather than its previous draft determination.

## Final 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) Train Path Policy (TPP) as amended under Recommendation 9 of the Authority's Final Determination on TPI's proposed (revised) TPP.

## Draft Determination – 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.*

### Public Submissions

89. No comments were made in the public submissions relating to Amendment 14.

### Authority's Assessment

90. The Authority confirms its position as set out in the draft determination, apart from a change to Amendment 14 referring to the Authority's final determination on TPI's TPP rather than its draft determination.

### Final 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 2009 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 Final Determination on TPI's proposed (revised) TPP.

### Draft Determination – 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.*

### **Public Submissions**

91. No comments were made in the public submissions relating to Amendment 15.

### **Authority's Assessment**

92. The Authority confirms its position as set out in the draft determination.

## Final 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 2009 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 2009 TMG on page 9 (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 8 of WNR's 2009 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 2009 TMG under the "Notes' heading at the bottom of page 8.

### Draft Determination – 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.

### Public Submissions

93. No comments were made in the public submissions relating to Amendment 16.

### Authority's Assessment

94. The Authority confirms its position as set out in the draft determination.

## Final 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 2009 TMG commencing from the beginning of the seventh paragraph (which starts with "No later than ...") on page 12 to the end of section 4 of WNR's 2009 TMG.

### Draft Determination – 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.*

### Public Submissions

95. The NWIOA and UMC requested confirmation that Amendment 17 applies to section 4.4 issues related to daily train operations.

### PricewaterhouseCooper's (PwC) Advice

96. In relation to the comment by the NWIOA and UMC, PwC noted that the consultation protocols required under Amendment 17 would apply generally to infrastructure management and network operational issues that give rise to the need for communications between TPI and operators. As a result, PwC considered that these protocols would therefore apply to section 4.4 and other parts of sections 3 and 4 of TPI's TMG, as applicable.

### Authority's Assessment

97. The Authority notes that Amendment 17 requires TPI to include in its TMG similar arrangements to those set out under section 2.4 of WNR's 2006 TMG. These arrangements relate to TPI or the operator becoming aware of network failures or potential deviations from the train path (whereby the predicted exit time from the network will be at variance to the scheduled exit time).
98. The Authority agrees with PwC that the consultation protocols would apply to section 4.4 of TPI's TMG and notes that, to the extent that either of the above matters (network failures or potential deviations from the train path) is of relevance

during the course of daily train operations, then the consultation protocol set out under Amendment 17 would need to be implemented.

99. The Authority considers that the 24 hour communications link required under Amendment 17 between the railway owner and operators is intended to provide for real-time communication between TPI and operators. This link will facilitate the consultation protocol process set out under this amendment, as well as communication generally between TPI and operators related to other elements of TPI's TMG where real-time communication is required, including daily train operations.
100. The Authority confirms its position as set out in the draft determination.

### Final 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 2009 TMG.

### Draft Determination – 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.*

### Public Submissions

101. No comments were made in the public submissions relating to Amendment 16.

### Authority's Assessment

102. The Authority confirms its position as set out in the draft determination.

## Final 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 2009 TPP.

### Draft Determination – 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)."*

### Public Submissions

103. UMC commented that it was concerned that the draft determination had not outlined how the Authority intends to monitor compliance with section 16(2) of the Code. UMC also requested that the intent of section 16(2) be incorporated into the proposed section 4.9 of TPI's TMG
104. The NWIOA supported the two year review period outlined under Amendment 19 but listed as concerns the same matters raised by UMC.

105. TPI suggested some minor wording changes to the effect that “TPI agrees to a review/monitoring by the ERA’ rather than “The ERA will review/monitor’.

### **Authority’s Assessment**

106. The Authority notes that in relation to the issue of monitoring TPI’s compliance with section 16 of the Code, the draft determination set out a requirement for an independent audit of TPI’s TMG every two years. The Authority expects the first such audit to occur at the end of the 2011-12 financial year on the basis that the approval process for TPI’s regulatory documents should be completed by the end of the 2009-10 financial year.
107. The Authority also notes that the draft determination set out the requirement for a review of TPI’s TMG, through a public consultation process, after two years. This process will provide an opportunity for the Authority to assess the views of operators in relation to the operation of TPI’s TMG.
108. In regard to the issue of incorporating the intent of section 16 of the Code into TPI’s TMG, the Authority considers that this is an appropriate suggestion and has dealt with this matter through Amendment 3 of this final determination.
109. As a further point, as noted in the Authority’s final determination on TPI’s proposed TPP, the Authority will be writing to TPI in the near future outlining the requirement for the two-yearly independent audit, to cover those provisions of the Code (including section 16) relating to obligations on the railway owner in relation to dealing with access seekers under the Code. A similar arrangement is in place for WNR, as described on the Authority’s web site ([www.era.wa.gov.au](http://www.era.wa.gov.au)).
110. With regard to the comments by TPI, the Authority agrees with the proposed changes to Amendment 19 of the draft determination.
111. The Authority also considers that Amendment 19 in the draft determination should be revised to include more specific detail on the timelines for undertaking the audit and review of TPI’s TMG.
112. With the exception of the above changes, the Authority confirms its position as set out in the draft determination.

## Final 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 2009 TMG with the exception of the following:
  - First paragraph of WNR's section 5: Delete this paragraph and replace with "TPI agrees to a review of the TMG by the ERA, 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. It is expected that the review will commence on 1 October 2012 and that TPI will provide the ERA with its proposed revised TMG on this date".
  - Fourth paragraph of WNR's section 5: (1) Replace "WestNet" with "TPI". (2) Replace "The ERA will monitor TPI's compliance ..." with "TPI agrees to the monitoring by the ERA of its compliance..." (3) Add the following sentence to the end of this paragraph; "It is expected that the first audit will commence at the end of the 2011-12 financial year".

### Draft Determination – 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).*

### Public Submissions

113. No comments were made in the public submissions relating to Amendment 20.

### Authority's Assessment

114. The Authority confirms its position as set out in the draft determination.

## Final 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 2009 TMG (pages 14 to 16).