Caledonian Sleeper Franchise

Full Business Case

Transport Scotland

20 June 2014

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This document has 72 pages including the cover.

Document history

Job number: 5108201			**Document ref: 5108201/380**			
Revision	Purpose description	Originated	Checked	Reviewed	Authorised	
1.0	First draft (pre- Away Day) for client comment	JA	RAG	RI	RI	
2.0	Second draft	TVB	RAG	RI	RI	
3.0	Final Draft	TVB	JA	RAG	RI	
4.0	Final for submission to Board	TVB	JA	RAG	RI	
5.2	Updated to reflect expected contracting process outcome.	TVB	RAG	RI	RI	
5.3	Redacted for publication on the Transport Scotland website.	AR				

Client signoff

Client	Transport Scotland
Project	Caledonian Sleeper Franchise
Document title	Full Business Case
Job no.	5108201
Copy no.	
Document reference	5108201/380

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Table of contents

Chapter | Pages

Executive summary **5**
Introduction 5
Key conclusions following the Full Business Case 5

1. Introduction **9**
1.1. Purpose of this report 9
1.2. Structure of the FuBC 9

2. The rationale for intervention **11**
2.1. Introduction 11
2.2. The Strategic Case for the Caledonian Sleeper Franchise 11
2.3. Changes to the derivation of franchise benefits and costs 16
2.4. Revisiting the Economic Case for a new build option 22

3. Overview of the Procurement Strategy **25**
3.1. Introduction 25
3.2. A procurement strategy based on balanced Price/Quality approach 25
3.3. Changes to the risk profile 25

4. Selection of the leading bidder **28**
4.1. Introduction 28
4.2. Summary of the evaluation process 28
4.3. Provisions for ensuring ongoing value during mobilisation and operations 30

5. Negotiated deal and contractual arrangements **31**
5.1. Introduction 31
5.2. Contractual arrangements 31
5.3. Services to be provided and Timescales for delivery 32
5.4. Key commercial issues and risk allocation from negotiated deal 32
5.5. Contract Mobilisation 33

6. Financial implications of the leading bid **35**
6.1. Introduction 35
6.2. Bidder financial forecasts 35
6.3. Implications for Transport Scotland's rail budget 37

7. Project Management Plan **39**
7.1. Introduction 39
7.2. General transition plan 39
7.3. Leading bidder's transition plan 45
7.4. Regulatory requirements for transition 48

Tables

Table 2-1 Caledonian Sleeper Benefits Realisation Plan 12
Table 2-2 Updated Comparator forecast, Rolling Stock Option 3 (£m, nominal undiscounted prices and values) 19
Table 2-3 Incremental impact of updated Comparator forecast compared to FiBC, Rolling Stock Option 3 (£m, nominal undiscounted prices and values) 20
Table 2-4 Updated financial forecasts for new-build options 22
Table 2-5 Economic outputs for the leading bidder (2010 prices and values) 23
Table 4-1 RADAR weightings and the relative contribution of individual Delivery Plans to overall Quality score 29
Table 6-1 Leading Bidder franchise financial forecast (£m, nominal undiscounted prices and values) 36

For Publication

Table 6-2 Transport Scotland affordability position based on the Leading Bidder (£m, nominal undiscounted prices and values) 38
Table 7-1 Roles and responsibilities of the Mobilisation and Migration Team (MMT) 46
Table 7-2 Benefits of a successful TUPE transfer and mobilisation of staff 48
Table 7-3 Licenses and regulatory agreements required to operate the franchise **Error! Bookmark not defined.**
Table 7-4 Depot access agreements in place **Error! Bookmark not defined.**

Figures

Figure 2-1 Revenue by Rail Period (2011/12 P1 to 2013/14 P7) 17
Figure 2-2 2013/14 revenues relative to the last two years 17
Figure 6-1 Profile of franchise bid subsidy (£000, nominal undiscounted prices and values) 35
Figure 6-2 15-Year Revenues and Costs (£m nominal undiscounted prices and values) 37
Figure 7-1 Resources and structure of the leading bidder's MMT 46
Figure 7-2 Governance structure 47
Figure 7-3 Mobilisation Meeting Hierarchy 47
Figure 7-4 Sub-processes of the franchise transition process by workstream and sub-phase .... **Error! Bookmark not defined.**

For Publication

Executive summary

Introduction

This Full Business Case (FuBC) report is the fourth business case document produced during the procurement of the new Caledonian Sleeper franchise, the others being:

- The Strategic Business Case (SBC), which provided an initial view on the political and strategic rationale for the franchise. The SBC was prepared and approved by Transport Scotland in 2012.
- The Outline Business Case (OBC), which provided an initial view on the affordability of the franchise, and assisted with the development of the franchise evaluation strategy in advance of Pre-Qualification Questionnaire (PQQ) documentation being provided to bidders. The OBC was prepared in winter 2012/13, finalised in March 2013 and received Programme Board approval in April 2013.
- The Final Business Case (FiBC), which updated and refined the demand forecasts and affordability implications of the new franchise prior to the ITT going out to bidders. The FiBC was produced in July 2013 and received Programme Board approval in September 2013.

The FuBC sets out the changes to the business case for the new Caledonian Sleeper franchise since the production of the Final Business Case (FiBC) in July 2013. It replaces Transport Scotland's forecasts on the expected operating revenues, costs and subsidy requirements with those supplied by the leading bidder for the new franchise. The FuBC will be used to inform the Transport Scotland Rail Franchising Programme Board on the leading bidder's proposals for operating the franchise, and Transport Scotland's approach to working with the new franchisee to ensure the successful delivery of new/refurbished rolling stock, compliance with strategic objectives, and performance against the proposed financial and commercial offer.

Note on version 5.3 of this document:

The previous version of this document (version 4.0) presented the business case following evaluation of bids the new Caledonian Sleeper franchise and this informed authorisation to progress into a phase of detailed contracting with two leading bidders. This version 5.3 of the Full Business Case is updated to reflect the position at a late stage in detailed contracting with the leading bidder for the new Caledonian Sleeper franchise. It now presents the business case only on the presumption of contracting with that single, leading bidder and although the business case as described here (particularly in respect of contractual structure and commitments) cannot be guaranteed to be met until contracts are signed, this document is intended to inform a decision whether to authorise contractual close with the leading bidder on this basis.

Key conclusions following the Full Business Case

This Full Business Case, building on the previous business case documentation and the evaluation of bidder submissions, provides the following key messages in relation to the Caledonian Sleeper franchise:

A positive response to a procurement strategy based on a balanced approach to Price and Quality

Transport Scotland's Scottish Rail Franchising Programme Board endorsed an approach to franchise evaluation that placed a broadly equal weighting on quality/deliverability and price. To effect this, it agreed to place a value of £1m (NPV, consistent with the discounting used for evaluation of bid price) on each Quality point awarded out of a maximum of 100. This was based on scenario testing, which suggested an appropriate range of between £0.6m and £1.2m, as well as Transport Scotland's view on the relative value that should be placed on Quality aspects of potential bidder's proposals.

The bids for the franchise clearly responded to the requirement for high quality bids – and the subsequent evaluation of the bids using the above Price/Quality mechanism has, thus far, appeared to work successfully. All bids offer significantly better quality than the minimum required by the specification. Bid evaluation produced Quality scores ranging from 59 to 74 – where the highest quality was, somewhat logically, associated with the highest price. The adjustments to Price scores to reflect Quality did not change the

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overall ranking, but it has ensured that Quality has been demonstrably taken into account in the overall evaluation.

There remains a clear rationale for investment in the Caledonian Sleeper franchise

User and non-user surveys, undertaken in 2012 and 2013, confirmed that passengers will welcome the investment in a new Caledonian Sleeper product. The bid submissions confirm that with the right approach to rolling stock improvement and overall upgrading of the product offer and franchise management, the declining performance of the Sleeper can be reversed and substantially improved upon. Bid submissions suggest there is substantial potential for growth in passenger numbers, bidder forecasts ranging from 27% to 42%, with the leading bidder proposing 32% patronage growth. This is based on customer response to the new rolling stock; a dynamic approach to pricing that will allow the franchisee to flex pricing in response to market conditions and underlying changes in demand; and an improved, sustained and targeted marketing campaign throughout the lifetime of the franchise. We note, however, that the growth forecasts need to be set in the context of bidders forecasting a lower opening position on demand and revenue than at present – but they still represent a positive view of the underlying potential of the Sleeper to deliver patronage growth.

There has been a continued decline in patronage through Financial Year 2013/14 that, when taken in conjunction with the decline already seen over the past two years, confirms that the current product and approach to managing the franchise is sub-optimal and in clear need of investment and management focus.

The quality of the bid submissions, and the level of engagement of all three bidders with the overall procurement process, demonstrates a clear appetite for taking on the Caledonian Sleeper as a stand-alone product, providing further confidence in the decision of Transport Scotland to procure a separate Caledonian Sleeper franchise.

There is a financially sustainable and positive economic business case for investment

The leading bidder has forecast a subsidy requirement that lies well within the range originally forecast for the Caledonian Sleeper franchise at OBC and FiBC stage: a cumulative subsidy forecast in nominal undiscounted terms of £188m, compared to over £320m in a forecast downside scenario (which excluded the additional downside risk associated with an ORCATS challenge). Real subsidy is expected to fall over the course of the franchise, as revenue growth is expected to offset the additional operating costs required to deliver the new product and service enhancement.

The economic case has been reviewed in the context of the leading bidder's proposals – this confirms that, subject to achieving its rolling stock specification and changes to the franchise as set out in the bid, the economic case for investment remains strong (BCR of >1.00). This is a substantial improvement on the economic case for new build scenario at OBC stage, reflecting the bidder's greater level of user benefits resulting from higher levels of patronage growth, along with increased revenue growth. It also reflects a change to the underlying Do-Minimum scenario, which based on market information gleaned from bids received, previously underestimated the true cost of running the franchise in the absence of substantial investment in rolling stock and product/service enhancement, and given the continued decline in patronage and revenue.

Despite the financial and economic benefits that are expected to be delivered by the new franchisee, Transport Scotland should continue to monitor the impact in terms of overall affordability. The cost of the leading bidder, in terms of franchise subsidy, was the lowest of all three bids and lies within the range forecast at OBC and FiBC stages, albeit more expensive than the previous central case forecasts. There is also a need to allow for contingency beyond the core bidder forecast. Two specific areas of uncertainty have been included as contingency at this stage [redacted text].

When included alongside current forecasts of subsidy requirement on the ScotRail franchise, costs for Network Rail charges during Control Period 5, and the budget available for running the Scottish railway, there is the potential for a budget surplus in year 1, but with a relatively small deficit in years 2-4 of the franchise – although most of this deficit could, in theory, be covered by a reallocation of the surplus from year 1. Further information on the assumptions underpinning this assessment are given in Section 6.3 of this report. With regard to the projected cost of the ScotRail franchise, this assessment is based on the Comparator model forecasts. At the time of completion of this Full Business Case, bids have been received for the ScotRail franchise. Initial evaluation of the financial proposals of these bids suggests that whichever bidder wins the ScotRail franchise, subsidy requirement will be lower than assumed in this report, to the extent that this would produce a surplus in all four reported years. However, the Comparator forecast is

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retained in this assessment while ScotRail evaluation proceeds because there remains the possibility of equalisation adjustments being required or other unexpected outcomes from the ScotRail evaluation process. The affordability analysis may therefore be considered a prudent and conservative assessment in this respect, with a current expectation that completion of the ScotRail franchise process will deliver an improvement. Transport Scotland should continue to monitor the overall budget requirement and affordability as the procurement of the ScotRail franchise progress through summer.

There remain risks that need to be monitored and addressed in advance of, and during, the new franchise

The bid submissions have provided ***confirmation of the uncertainty in future year revenue forecasting***. [redacted text]

Moreover, whilst each bidder shows some evidence of market research, forecasting demand response for a new rail product of this nature remains difficult. Bidder proposals for monitoring the key underlying drivers of demand and responding accordingly – along with Transport Scotland's own on-going analysis as part of the Benefits Realisation Strategy – will be a key requirement of the on-going operation of the franchise.

[redacted text] Analysis suggests that the Caledonian Sleeper still receives a favourable proportion of the inter-available rail revenues through the ORCATS allocation and that the allocation mechanics are sensitive to train timetable profile changes. These put a proportion of the inter-available rail revenues at risk to challenge or reallocation. The risk surrounding ORCATS is however irrespective of the decision to procure the Caledonian Sleeper as a separate franchise, but Transport Scotland will need to work closely with the new franchisee to limit the exposure to, or outcome from, ORCATS challenge.

The leading bidder has proposed wholly new build rolling stock, compared to proposals for refurbishment of existing rolling stock from the other two bidders. There are different **risks associated with the procurement of new rolling stock as opposed to risks inherent in a refurbishment option**. The work undertaken prior to receipt of bids had suggested a limited business case for new build rolling stock, yet the bid proposal is not the most expensive and actually produces the lowest overall subsidy requirement of the three bids received. The risks around this particular proposal relate to the lack of detailed designs at bid stage: As might be the case with either refurbished or new-build stock, final design details may affect the final passenger capacity of different classes of accommodation. There are also risks in the outturn delivery programme, which may prove to be challenging – being consistent with what is typical of a repeat order for an established UK train design. It also results in uncertainty around some details of the specification of the product that will ultimately be delivered, and the outturn cost of delivering and operating the new fleet of vehicles. Technical advisers took part in the bid evaluation of the new train proposals, which concluded that the delivery and commercial risk is acceptable – indeed to some extent inevitable if the benefits of new trains are to be secured. The leading bidder has provided assurances that it will continue to work closely with its partners to ensure delivery of the new-build rolling stock to agreed timescales and in accordance with the level of specification proposed at bid stage. Transport Scotland will need to monitor progress closely to ensure no subsequent problems with the roll out of the new rolling stock.

The leading bidder has also proposed the use of Class 73 and Class 92 locomotives, to replace the current Class 67 locomotives currently used to haul Sleeper rolling stock. There is a **risk associated with the introduction of refurbished traction not previously used for Sleeper haulage**. There are risks in terms of the suitability of this type of traction, which is, as yet, untested in the conditions that the Sleeper operates in[redacted text]. There are further risks aligned to this, most obviously related to the ability of the Class 92 (87 mph) locos to recover from delay. Rebuilt Class 73 locomotives are not already cleared for operation on all Sleeper routes and how [redacted text]. We note, however, that there would be similar risks associated with the traction proposals of both other bidders – it is not solely a risk associated with the leading bidder, but it will remain an area that Transport Scotland – and Network Rail – should monitor closely.

Bidders and Transport Scotland have clear proposals for ensuring ongoing value during mobilisation and operation of the franchise

Transport Scotland has established a Transition Management Plan, setting out roles and responsibilities of key stakeholders. A key element of the transition will be the input of the outgoing franchisee. Transport Scotland will need to monitor and facilitate the level of engagement with the outgoing franchisee and will use its Joint Steering Group, at director level, and Project Management Group, for management and work stream leaders, to ensure all activities for transition are carried out.

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Similarly, the leading bidder has set out a detailed Mobilisation Plan, based around 10 core principles aimed at ensuring a comprehensive, timely and smooth transition. The leading bidder has produced detailed proposals for the direction and management of mobilisation, and for ongoing communication with Transport Scotland, the outgoing franchisee, Network Rail, the ORR and other bodies involved in setting up the new franchise. A key element of the transfer – TUPE transfer and mobilisation of staff – is clearly set out as part of an overall staff transfer plan. The combination of inputs from Transport Scotland, the leading bidder, the outgoing franchisee and all other interested parties is aimed at ensuring the mobilisation period in the run up to franchise start, and immediately afterwards, is sufficiently smooth to ensure value for customers and the taxpayer.

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1. Introduction

1.1. Purpose of this report

This Full Business Case (FuBC) sets out the changes to the business case for the new Caledonian Sleeper franchise since the production of the Final Business Case (FiBC) in July 2013. It replaces Transport Scotland's forecasts on the expected operating revenues, costs and subsidy requirements with those supplied by the leading bidder for the new franchise.

The FuBC is the fourth business case document produced during the procurement of the new franchise, the others being:

- The Strategic Business Case (SBC), which provided an initial view on the political and strategic rationale for the franchise. The SBC was prepared and approved by Transport Scotland in 2012.
- The Outline Business Case (OBC), which provided an initial view on the affordability of the franchise, and assisted with the development of the franchise evaluation strategy in advance of Pre-Qualification Questionnaire (PQQ) documentation being provided to bidders. The OBC was prepared in winter 2012/13, finalised in March 2013 and received Programme Board approval in April 2013.
- A Final Business Case (FiBC), which updated and refined the demand forecasts and affordability implications of the new franchise prior to the ITT going out to bidders. The FiBC was produced in July 2013 and received Programme Board approval in September 2013.

The FuBC will be used to inform the Transport Scotland Programme Board on the leading bidder's proposals for operating the franchise, and Transport Scotland's approach to working with the new franchisee to ensure the successful delivery of new/refurbished rolling stock; compliance with strategic objectives; and performance against the proposed financial and commercial offer. The purpose of the FuBC is to revisit the OBC/FiBC and record the findings of the subsequent stages of procurement, and to confirm that the leading bid offers an affordable solution that satisfies the franchise objectives, realises the benefits identified for the procurement and represents value for money for Transport Scotland.

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1.2. Structure of the FuBC

Following this Introduction, the FuBC is split into six stages:

Section 2 sets out the **rationale for intervention**, to confirm that the strategic case underpinning the procurement of the franchise remains sound. Any changes to the scheme context and/or approach to deriving the benefits and costs for the franchise are described here.

Section 3 provides an **overview of the procurement strategy**, to confirm the process that has been followed to select the leading bidder; that it continues to offer best value and any change to the risk profile.

Section 4 confirms the **selection of the leading bidder**. It describes the basis on which the leading bidder has been selected, together with the provisions for ensuring continuing value, with references across to the Benefits Realisation Strategy used to identify and monitor the ongoing performance against franchise objectives and Bidder proposals.

Section 5 sets out the **negotiated deal and contractual arrangements** (based on current drafting contained in the draft contract suite issued following bid evaluation); the services and outputs to be

contracted, together with timescales for delivery (with particular emphasis on rolling stock proposals). It presents key contractual issues and details of risk allocation between the franchisee and Transport Scotland.

Section 6 presents the **financial implications of the leading bid**. It identifies the capital, revenue and cost implications of the leading bid, including costs (operating subsidy, plus investment in rolling stock) that will be incurred by Transport Scotland, and the impacts on Transport Scotland's balance sheet.

Section 7 confirms the **project management plan** for transferring to the new franchise, with a shift in emphasis from the management of the procurement process to the provision of information as to how the mobilisation and operation of the new franchise will be undertaken.

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2. The rationale for intervention

2.1. Introduction

This section summarises the strategic case for the Caledonian Sleeper franchise, to confirm that the rationale for intervention presented in the SBC, OBC and FiBC remains valid. It also describes changes to the Comparator model since the Final Business Case was undertaken in June 2013, to ensure consistency with the bid assumptions provided to bidders and included in their submitted models. The main purpose of the FuBC is to present details of the leading bidder's proposals, but this should be done in the context of the forecasts produced by Transport Scotland in advance of bid submission. In order to provide a consistent basis for comparison these forecasts are updated to include additional information that was not available when the FiBC Comparator was developed.

2.2. The Strategic Case for the Caledonian Sleeper Franchise

In spring 2012 it was announced that the Sleeper would be split from the main ScotRail contract, using a 15 year franchise term. The Ministerial decision to create a separate Caledonian Sleeper Franchise was taken in order to obtain more focused management of the Sleeper operation to develop a transformed product offering that will secure its future as a sustainable business. The decision was taken in conjunction with the announcement that the UK Treasury and Scottish Government would invest at least £100m into the service; this would ensure that the Sleeper services are enhanced to offer better facilities and a more responsive service to passenger needs.

In the Financial Year 2011/12 the Sleeper service had directly attributable costs of £25.8 million (excluding profit, management fee and head office costs) and excluding any allocation of Fixed Track Access Costs (FTAC) assumed to be £5m for the new Franchise in 2015. In the same year the incoming attributable revenue of £20.6m were reduced by approximately £1.1m following payments made to other TOCs.

Revenues on the service grew rapidly over the three year period to 2010/11 from which point revenues have fallen from a high of[redacted text]. Due to the unique nature of the Caledonian Sleeper franchise, forecasting future demand, revenue and costs for the Sleeper is inherently uncertain. Recent trends suggest, however, that Sleeper demand displays an inverse relationship with air demand on competing services. The Sleeper has also had additional competition since the autumn of 2011 with the introduction of the Megabus sleeper coach and competitive off-peak day train fares. The Caledonian Sleeper currently uses rolling stock approaching 30 years old and is in need of total refurbishment above and below the floor. While this strong influence of air competition and the threat of new competitive services represent a commercial risk for the Sleeper, the current low market share proportion captured by the Sleeper suggests a very strong opportunity for a transformed Sleeper service, underlining the case for investment.

In the face of the recent strengthening in competition to the Sleeper, and without substantial investment and management intervention, there is a strong possibility of continued patronage decline and loss of market share. The outputs from the economic appraisal show that there is a strong business case for investment in improved product and services on the Caledonian Sleeper franchise – this has been confirmed by the level of market interest in the procurement of the Sleeper franchise, and the subsequent submissions of the three short-listed bidders.

To determine whether the Caledonian Sleeper franchise benefits are being realised, the desired outputs have been converted into measurable indicators of project benefits with a defined target as set out in Table 2-1. The data required to measure the extent to which benefits are being realised are also shown in Table 2-1. The winning bid meets the ITT requirements and responds positively to the incentives to provide measured quality. The bidder will contractually commit to the delivery of these benefits. Chapter 7 provides details of how Transport Scotland and the leading bidder propose to deliver ongoing value through mobilisation and the operation of the new franchise. For some franchise benefits there is more than one benefit indicator which has been established to measure the extent to which the benefit is being realised. The Benefits Realisation Plan will remain a live document, to be regularly reviewed and updated during franchise mobilisation and once operational.

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Table 2-1 Caledonian Sleeper Benefits Realisation Plan

Benefit Identifier /Delivery Plan	Benefit (Desired Output)	Benefit Indicator	Target	Benefit Category	Specific Data Requirements
A1	**Rolling Stock (Accommodation)** – a substantial improvement in the quality of passenger accommodation through the procurement and delivery of rolling stock to the required capacity		Preparation of a **Rolling Stock Strategy** which will set out: • The extent to which the franchise objectives will be addressed by refurbishment of existing or 'cascaded' rolling stock, acquisition of new stock or a mixture of these • The approach to the provision of traction power • How enhanced rolling stock will be procured, financed and owned • Future maintenance arrangements • Provision of on-board passenger facilities (meeting 3 classes of accommodation requirements) Provision of rolling stock to meet or exceed requirements defined in the Franchise Agreement	Non-financial quantitative & qualitative	Full and detailed fleet plan for each year of the franchise and then monitor rolling stock against rolling stock target criteria
A2	**Station Enhancements** – enhanced station facilities for customers **Accessibility**- increased accessibility to stations where the Sleeper calls		**Clear strategy** for ensuring station facilities are enhanced to meet customer expectations with proposals centred around how Network Rail's £6 million fund for Caledonian Sleeper-related stations enhancements is to be allocated. The strategy should also address easier access to stations and wider transport integration	Non-financial quantitative & qualitative	Full and detailed plan required against which progress will be monitored. Passenger Survey Data

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Benefit Identifier /Delivery Plan	Benefit (Desired Output)	Benefit Indicator	Target	Benefit Category	Specific Data Requirements
	Connectivity/integration – public transport onward connections		objectives. **Station facilities plan** setting out what improvements, how these will be made available and how they are to be delivered **Station Access Strategy** setting out working with other stakeholders including Network Rail to deliver improvements in access arrangements and routes, multi modal integration and connectivity, the provision of information, advice and guidance		Passenger Focus
B1	**Passenger Experience**	Deliver a compelling product improvement to provide a transformed passenger experience Achieve an internationally renowned service that is emblematic of the best of Scotland, shown by strong brand awareness in Britain and among international	**Strategy for transformational change** of the overall quality of service provided to passengers (through the enhancement of facilities, catering, other services, station and on-board staffing, the provision of information, service quality standards) to achieve the franchise objectives. **Strong brand awareness** in Britain and among international visitors **Delivery of passenger information** end to end and strong customer relations.	Non-financial qualitative	Monitor quality and accreditation and certification. Monitor progress against Passenger Charter National Passenger Surveys. Regular SQUIRE monitoring and reporting. Liaison with Visit Scotland Implement passenger surveys to assess

Benefit Identifier /Delivery Plan	Benefit (Desired Output)	Benefit Indicator	Target	Benefit Category	Specific Data Requirements
		visitors			perception of: • Operational performance • Quality of Service • Value for Money
B2	**Operation & Management of the new Franchise including Mobilisation**		**Migration & Mobilisation Strategy** Transfer staff under TUPE, enter into access agreements (stations, track and depots), acquisition of operating licence and railway stations certificate. Transfer of supporting assets. Liaison with stakeholders (other Train Operating Companies, Network Rail and others). Resource plan showing resources required to operate franchise from day one. Opportunities register, risk register, fleet plan, train and other staffing plans. Timetable bid, environmental management plan, recruitment and training plan, remuneration policy and framework. Statement from Network Rail on deliverability of timetable.	Qualitative Financial & Quantitative	Ensure plans in place, followed and as required updated. Establishment of the franchise transition Working Group.
B3	**Retail, Marketing & Branding**	Combine step-change quality enhancements with improved marketing and retailing to grow	**Strategy for Marketing, Branding and Retailing** and how this will meet Franchise objectives and stimulate demand over the life of the franchise including an understanding of the current market, competing modes, understanding of factors likely to drive changes, opportunities for passenger and revenue growth and an		

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Benefit Identifier /Delivery Plan	Benefit (Desired Output)	Benefit Indicator	Target	Benefit Category	Specific Data Requirements
		patronage Achieve an internationally renowned service that is emblematic of the best of Scotland, shown by strong brand awareness in Britain and among international visitors	understanding of the risks. **Fares Strategy** which would include fares structures and changes and clear and comprehensive customer information as well as ticket sales channels and any new ticketing media.		
B4	**Assessment & Refinement**	Manage the business and investment to deliver better value for Transport Scotland and/or customers in terms of the benefits achieved through the subsidy	**Measurement, reward and review Plan of Franchise Objectives and Commitments** including management responsibilities and business processes for performance measurement (including a risk management strategy, the identification and delivery of contingency plans and mitigation, the identification of internal or external best practice, the generation of opportunities for improvement). Particular focus on the monitoring of expenditure and delivery of the rolling stock plans to the defined programme.		Detailed Franchise management and monitoring requirements

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2.3. Changes to the derivation of franchise benefits and costs

2.3.1. Introduction

Five areas in which bidder forecasts differed to those of the Comparator (as presented in the FiBC) were:

- Bidder models had a 2012/13 price base, using the Long Form Report and Data Book produced in late-July, after the FiBC models and documentation had been finalised; the FiBC Comparator was based on a 2011/12 price base using an earlier version of the Long Form Report.
- Allowance for an additional seven periods of data from the existing franchise operations;
- Removal of the ORCATS adjustment payment from 'Other Revenue';
- Inclusion of a bid assumption for the allocation of the Scottish rail network Fixed Track Access Charges (FTAC) as a proxy for the proportion to be allocated to the Sleeper of the Office of Rail Regulation (ORR) Final Determination on 20 December 2013 (after bid submission); and
- Control Period 5 (CP5) rates and benchmarks published by the ORR and Network Rail on December 20th 2013 (issued to bidders as an evaluation clarification post bid submission).

A version of the Comparator model was produced prior to receiving bids, which captured all of these changes except those relating to CP5 rates and benchmarks (which were not made available until December 20th) and the seven additional periods of demand and revenue data. The changes are described in Section 2.3.2 – 2.3.6. The impact of the changes on the Comparator forecasts is shown in Section 2.3.7. The updated Comparator is provided here purely for context, to provide a point of comparison for the leading bidder's forecasts, which are provided in Chapter 6.

2.3.2. Updating the base year data

The Caledonian Sleeper FiBC models were finalised in mid-June of 2013, with the final report being submitted in early-July. The models were developed with a price base of 2011/12, using the latest available information at that time. By contrast, bidders developed their suite of models in the ITT phase during the period September-December, using updated franchise data supplied by Transport Scotland in the Long Form Report issued in July /August. Bidder models therefore had more up-to-date information to allow them to develop models with a 2012/13 price base. A Comparator model was therefore developed for use in bid evaluation that used the same base data afforded to bidders – and is used as the basis for the Comparator presented in this FuBC report.

2.3.3. Additional revenue data for 2013/14 Periods 1-7

The FiBC forecasts were based on the latest available demand and revenue data at that time, which was the information supplied by First ScotRail for financial year 2012/13. At ITT stage, however, bidders were supplied with data for the first seven Periods of financial year 2013/14. The Figure below shows the profile of revenues received in each period over 2011/12 and 2012/13 along with revenues for the first seven periods of 2013/14.

The figure shows that:

- In nominal terms revenues totalled [redacted text].
- There is a clear seasonal profile to sleeper demand over the course of the year. Revenue generally peaks between May and August and is lowest during Christmas and New Year.
- There is a high anomaly in revenues during the second period of 2011/12. Revenues during this period are probably magnified by the 2011 eruption of Grímsvötn which caused disruption to air travel in North-Western Europe from 22–25 May 2011. (Not to be confused with the more disruptive eruptions of Eyjafjallajökull during April and May 2010.)
- Within the wider profile there is a reduction in revenue during the fourth and fifth periods of 2012/13. This was during the London Olympics and was probably as a result of people being dissuaded from travelling to London during this time.
- Relative to the previous two years Sleeper revenues were reduced in the first period of 2013/14 although this trend did not continue over the following six periods for which data is available.
- In 2013/14 sleeper revenues totalled [redacted text] to the end of the 7th period. This equates to [redacted text] of the total revenue during the same periods in 2011/12 and 99.7% of total revenues up to the same point during 2012/13.

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Figure 2-1 Revenue by Rail Period (2011/12 P1 to 2013/14 P7)

[redacted graph]

The factors above could be used to factor revenue from the first seven periods of 2013/14. However, as a final step, the anomalies in revenues identified above have been removed from the averages. This avoids carrying the impact of one off revenue changes (e.g. as a result of the London Olympics) into the revenue projection for the rest of the year. The chart below shows revenues in 2013/14 relative to revenue in the same period over the last two years. The dashed lines following on from period seven represent the forecast relative to the comparison year, which is derived by taking the average to date after removing known anomalies (e.g. based on data over the first 7 periods 2013/14 revenues have been [redacted text] of 2012/13 revenues).

Figure 2-2 2013/14 revenues relative to the last two years

[redacted graph]

The Figure above shows that when removing anomalies from revenue lines. The revenue for the remaining six periods of 2013/14 would be anticipated to be

- [redacted text] of 2011/12 levels, giving a total revenue of [redacted text] for 2013/14, a [redacted text] in nominal revenues; and
- [redacted text] of 2012/13 levels, giving a total of [redacted text] for 2013/14, a [redacted text] in nominal revenues.
- Taking the average of the two would give a forecast revenue of [redacted text] over 2013/14. With inflation over the period of approximately 3.1% this translates into a real revenue [redacted text] over the year. Revenues equate to [redacted text] in 2012/13 prices.

In the absence of strong evidence around exogenous drivers or a continuous trend over recent years the FiBC took a flatline central forecast for sleeper revenues. This projected constant annual revenue of [redacted text] in real terms (or [redacted text] if removing the impact of the ORCATS adjustment payment as bidders were instructed to do in the ITT). The revised full year forecast for 2013/14 equates to [redacted text] in 2012/13 prices. The amendment removed around [redacted text] (in nominal terms) from the comparator forecast over the 15 year period, or by [redacted text] in NPV.

The additional seven periods of data suggest that real sleeper revenues will fall for the third year in succession. At the time of developing the FiBC forecasts last summer, analysis focused on the fluctuating demand and revenue over a 5-year period – with particular emphasis on the lack of any clear relationship (whether direct or inverse) between 'traditional' drivers (e.g. GDP growth) and outturn revenue. The proposal agreed with Transport Scotland at the time was to model a flat-line exogenous revenue curve. For the purpose of the FuBC, and to ensure a consistent approach with the previous FiBC analysis, we have retained the assumption that revenue will flatline from the latest year. For intervention scenarios the revenue was forecast as uplift over the flatline base. We note, however, that with the benefit of an additional seven periods of rail data, which show that demand and revenue are likely to fall for the third straight year, this flat-line assumption may prove to be overly optimistic. If we consider the age and condition of the existing rolling stock, and the lack of dedicated management focus on the Sleeper services as part of the current ScotRail franchise, there appears to be an even greater possibility that revenues will simply decline further in future months and years. Whilst the focus of this FuBC shifts from the Transport Scotland forecasts to those of the bidders, there may be a benefit to undertaking a sensitivity test to establish the likely Comparator outturn forecasts with a lower starting position for 2015/16 revenue, as at present the Comparator model assumes a higher level of opening demand and revenue than all three bidders.

In 2012/13 prices bidders have forecast revenue in the first year of the franchise (by which point there may be some increases as a result of their own initiatives) ranging from [redacted text].

2.3.4. Removing the ORCATS Adjustment Payment.

During the ITT phase, Transport Scotland confirmed that bidders should assume no change to the current ORCATS mechanism and rate of allocation of revenues to the Caledonian Sleeper. Transport Scotland also confirmed that bidders should remove the ORCATS adjustment payment – currently calculated as just under [redacted text] of total passenger ticket revenue (around [redacted text]) - that the Caledonian Sleeper franchisee pays out to other train operators. Removing this negative revenue item adds around [redacted text] to the total (15-year) Comparator forecast, or [redacted text] in terms of NPV.

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2.3.5. Inclusion of FTAC

Previous forecasts for the Caledonian Sleeper assumed that all Fixed Track Access Charges would be allocated to the main ScotRail franchise. Since then, however, the ORR has confirmed that a portion of the total FTAC will be allocated to the Sleeper. The exact amount has yet to be confirmed, so an interim bid assumption was provided to bidders for inclusion in their financial forecasts. The assumption was for a FTAC of [redacted text] (2015/16 prices), indexed with RPI, to be applied for each year of the franchise. The Comparator model has been updated to include the same charges, which adds approximately [redacted text] to total (15-year) franchise costs. However, this has no impact on Transport Scotland's rail programme affordability, since this is an arbitrary reallocation of fixed track access charges by the ORR that otherwise would still need to be paid for through the ScotRail franchise. These costs would not be reduced in any way if the sleeper services were not to run.

2.3.6. Allowance for CP5 rates and benchmarks

Bids for the Sleeper franchise were submitted on December 16th, four days before Network Rail published the rates and benchmarks that will be applied as part of the charging regime during Control Period 5 (2014-19). During the bid evaluation process, bidders were asked to update their financial models to reflect the new CP5 rates. These updated models were submitted to Transport Scotland in January 2014. The Comparator model has been updated to include the same rates and benchmarks, which adds approximately [redacted text] to total (15-year) franchise costs.

2.3.7. Updated Comparator forecasts

Table 2-1 provides an updated Profit & Loss summary for the Comparator, following the inclusion of the four adjustments described above. Table 2-2 provides a delta view comparison with the equivalent figures reported in the FiBC. The Comparator in this instance relates to 'Rolling Stock Option 3', which assumed investment of the £60m in refurbished rolling stock. Following the Consolidated Review on February 11th, all three bids remain in the competition, which means there is still the possibility of the winning bid being one proposing new rolling stock. Section 2.3.8 therefore gives consideration to the new rolling stock options assessed as part of the earlier business case work.

For Publication

Table 2-2 Updated Comparator forecast, Rolling Stock Option 3 (£m, nominal undiscounted prices and values)

[redacted table]

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Table 2-3 Incremental impact of updated Comparator forecast compared to FiBC, Rolling Stock Option 3 (£m, nominal undiscounted prices and values)

[redacted table]

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2.3.8. Implications for options based on new rolling stock

2.3.8.1. Introduction

The earlier business case work considered the potential economic and financial returns that would be generated if a bidder were to propose new rolling stock rather than refurbishing existing rolling stock. An all new rolling stock option was largely discounted following the OBC on the basis that it would at that stage appear to have been too costly – without producing sufficient offsetting revenue growth – for bidders to pursue as an option. At FiBC stage, however, further consideration was given to the partial new rolling stock replacement option, based on bidder feedback that suggested the refurbishment option may be more expensive than initially considered – and the new-build option cheaper – than had been thought when using the available information on market rates for leasing of refurbished/new rolling stock. A separate technical note[1] was produced in parallel to the FiBC, which considered the potential costs and revenues of the new-build options under a number of different assumed scenarios relating to the price of purchasing and leasing new vehicles. Given that one bidder has submitted a proposal based around new rolling stock, the new-build scenarios referenced above have been revisited to establish the equivalent values using a version of the Comparator model containing the changes described in Section 2.3.2 – 2.3.6.

2.3.8.2. Updated financial forecasts for new-build options

Table 2-3 shows the updated financial forecasts for new-build options originally presented in the document referenced at footnote 1, where:

- **Option 4A** is the full build option using assumptions as originally treated in the OBC:
  - £150m total capital cost based on 75 vehicles at an average cost of £2m per vehicle.[2]
  - Funding of the £150m capital investment based on £60m from Transport Scotland and the remaining £90m paid for by the ROSCO and recouped through lease charges levied on the franchisee.
  - Lease rates of £100 per £1000 of capital investment per month for new build. This rate was based on a ROSCO recovering the capital cost at around their WACC (7-9%) over the life of the franchise.[3]
  - Based on the above, annual lease charges of £120,000 per vehicle; £9m in total.

Option 4E and 4G are then variants on 4A using different combinations of ownership models, lease rates and cost per vehicle assumptions.

- **Option 4E**: £1.8m per vehicle and a lease rate of £75 per £1000 of capital investment. This lease rate lies at the lowest end of the range of possible lease rates supplied by EY in January 2013, and reflected the reduced lease rate that would apply (based on market intelligence at that time) if a ROSCO were to recover the cost of rolling stock over the lifetime of the asset (30 years) rather than over the franchise period.
- **Option 4G**: £1.8m per vehicle and a lease rate of £90 per £1000 of capital investment. The lease rate lies at the lowest end of the range of possible lease rates supplied by EY based on September 2013 market intelligence. It reflects the rate that a ROSCO would likely apply if recovering costs over the 30-year asset life, and is therefore directly comparable with Option 4E, above.

[1] '5108201 0221 CS Modelling variants of option 4a v1.0 190913.doc'
[2] Value of £2m per vehicle derived by Atkins and Transport Scotland
[3] Advice provided by EY

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Table 2-4 Updated financial forecasts for new-build options

[redacted table]

2.4. Revisiting the Economic Case for a new build option

2.4.1. Overview

The leading bidder has proposed wholly new-build rolling stock, compared to two other bids that included proposals for refurbished rolling stock. Given that the new build option was, at OBC stage, viewed to offer a relatively low value for money compared to refurbished options, it is worth revisiting the analysis to incorporate the leading bidder's patronage, revenue and cost forecasts to produce an equivalent benefit-cost ratio.

We note that Transport Scotland adopts an objective-led approach to the development and assessment of business cases, to reflect the contribution to overall value for money from non-monetised, strategic benefits as well as the standard monetised economic benefits; an economic benefit to cost ratio above 1:0 is not in itself a Scottish Government requirement of an acceptable business case. Nevertheless, an assessment of the relative benefits and costs is useful in understanding the extent to which bidders have balanced costs of investment in the new Sleeper product with the potential demand uplift and revenue growth that it could generate.

2.4.2. Economic assessment tool

A bespoke economic assessment tool was developed at OBC stage to assess the value for money case of upgrading the Sleeper Service rolling stock. It uses an elasticity-based approach to estimate a demand response arising from the change in users' perceived value of travel, the effect of marketing and branding, and to capture potential 'new mode' benefits to the franchise. The economic model uses the demand and revenue forecasts from the revenue model to calculate user benefits and the impact on patronage and operator revenue.

The economic model has been used to give an economic assessment of the leading bidder's submission. Rolling stock capital costs and incremental leasing and hire costs are taken from the bidder's financial model to derive the economic costs of each of the proposed options. Capital costs include the £60m for the rolling stock and the bidder's [redacted text] of capital expenditure eligible for funding through the Network Rail funding (£6m) for enhancements to stations within Scotland.

With regards to user benefits the bidder's fare policy has introduced an additional element to economic appraisal through increasing real fares on the sleeper service. This introduces a complexity to calculating the net welfare change to each individual. This is already a complex issue for the Caledonian Sleeper franchise, where benefits would largely be accrued from passenger increased willingness to pay for an improved service rather than from journey time savings typically used in transport appraisal. For the calculation of user benefits presented in the appraisal of the leading bidder's submission no attempt has been made to carry out calculations to derive the net user benefit for each sleeper passenger as they would be derived from the bidders forecasting methodology. Rather, the results from the OBC have scaled up in line with bidder forecasts of demand. Given that the bidder has forecast increasing demand with real fare increases, this approach to user benefits is conservative, giving an undiscounted user benefit of net benefit [redacted text] per passenger over the appraisal period (in 2010 prices).

A decay function is included in the economic model to reflect the decreasing level of perceived benefit from the upgraded rolling stock over time (i.e. through wear and tear). The decay function is delayed until 2017/18 in the case of the leading bidder, to reflect the point at which the new rolling stock is due to come on line, and therefore the longer time period (into the 15-year franchise) before which passengers begin to perceive a noticeable reduction in quality of the rolling stock (e.g. noting the ongoing perception of the Virgin Pendolino as a 'new' piece of rolling stock – prior to the recent roll-out of actual new units – despite being almost 10 years since they were introduced).

The output from the model is a summary of Value for Money indicators from the costs and benefits, including the Present Value of Benefits (PVB), the Present Value of Costs (PVC), the Net Present Value (NPV) and the Benefit Cost Ratio (BCR).

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The leading bidder's new rolling stock option is compared to a 'Do-Minimum' scenario that was developed for the economic appraisal at OBC stage, but which has been updated to include revised assumptions on underlying costs. This reflects the knowledge gained over recent months, including through the evaluation of bid submissions, about certain cost elements, most obviously the higher level of rolling stock maintenance that is likely to be required, irrespective of whether investment were to take place on the Sleeper rolling stock.

All options are run through the economic assessment tool using unconstrained revenue model outputs to generate potential demand uplifts. The uplifts are then passed back to the revenue model in order to produce a combined, constrained exogenous and endogenous growth forecast. The constrained forecasts are then re-run through the economic model / revenue model loop to produce a final set of constrained economic outputs and constrained demand and revenue forecasts for input to the financial model.

2.4.3. Economic outputs for the leading bid

Table 2-5 presents the economic output figures based on forecasts contained in the leading bidder's submission. This confirms a positive business case, with a benefit-cost ratio of 1.04. This is substantially higher than had previously been assumed for a new build option when assessed at OBC stage. This reflects two key factors:

- The operating cost of a Do-Minimum scenario is likely to be higher than previously thought, due to a combination of rolling stock maintenance costs and, to a lesser extent, ongoing lease charges
- The leading bidder forecast a high level of demand, which results in a larger level of user benefits. When combined with a higher overall level of revenue, particularly in the second half of the franchise, which in an economic appraisal is discounted at a standard treasury discount rate (as opposed to the substantially higher Sleeper-specific discount rate), it produces a much higher level of overall user and operator benefit.

It should be noted also that the Do-Minimum used in this appraisal, whilst including a higher cost base than in earlier analyses, retained a 'flat-line' approach to revenue after updating to the lower 2013/14 revenue line. The leading bidder currently assumes that revenue will [redacted text]. The trend in declining revenue is only forecast to slow in year 1 as their initiatives begin to have an effect on the service. If a continuing trend of declining revenue at the rate of 1% per annum was assumed in the base case then the benefit-cost ratio would increase to 1.26.

We note the absence of any monetised wider economic benefits from this appraisal. The traditional view of wider economic benefits will not apply in this case, as they relate primarily to the generation of time savings and the impact this has on potential agglomeration, business outputs and labour supply. Since the new services relate to service quality rather than to the production of actual time savings, these traditional wider economic benefits will not apply in this instance. Likewise, it was felt that the potential benefits to the Scottish economy due to the new tourism and business users attracted to the service could just as easily be offset by reduction in income for hoteliers – and also as result of Scottish consumers deciding to use the Sleeper service to travel to London to holiday/shop, rather than staying in Scotland. To ensure a consistent and realistic appraisal, therefore, no wider impacts have been included in this appraisal. It is reasonable to note, however, that passenger surveys suggest users value the Sleeper because it allows the efficient use of time – for example avoiding the need to travel earlier and stay in a hotel. Likewise, the Sleeper does facilitate visits for tourism. Therefore it is likely that there are additional benefits not captured in the current BCR

Table 2-5 Economic outputs for the leading bidder (2010 prices and values)

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All Values are in £ '000s and are expressed in 2010 prices and discounted to 2010

	Leading Bidder Raw
User Benefits	
Business User Benefits (£ '000)	£10,508
Commute User Benefits (£'000)	£157
Leisure User Benefits (£' 000)	£1,482
Total User Benefits (£' 000)	£12,147
Operator Benefits	
Revenue (£ '000)	[Redacted text]
Operating Costs (£ '000)	[Redacted text]
Total Operator Benefits	£53,589
Indirect Tax	-£7,723
Present Value of Benefits (PVB)	£58,013
Public Sector Costs (£ '000)	
Costs Incurred By Local Government	
Costs Incurred by National Government	£55,997
Present Value Costs (PVC)	£55,997
Net Present Value (NPV) (£ '000)	£2,016
Benefit Cost Ratio (BCR)	1.04
WI Benefits (£ '000)	1,051
BCR (incl. WI Benefits)	1.05

All entries are discounted present values, in 2010 prices and values

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3. Overview of the Procurement Strategy

3.1. Introduction

This section summarises the procurement approach leading to the decision on the leading bidder. It confirms the process that has been followed to select the leading bidder; that it continues to offer best value for meeting the objectives and logs any change to the risk profile.

3.2. A procurement strategy based on balanced Price/Quality approach

Transport Scotland's (TS) procurement strategy for the Caledonian Sleeper franchise is to seek a broadly equal weighting on quality/deliverability and price. The overall objective is to create an evaluation framework that promotes the acceptance of a better quality bid delivering the franchise objectives fully over a poorer quality one that delivers less against the franchise objectives, either where pricing is similar or despite pricing being tolerably higher.

The approach which was validated by and partly refined by the Brown review of rail franchising (2012) was adopted in the procurement strategy and was subsequently approved by the Transport Scotland Scottish Rail Franchising Programme Board. This approach uses a Target Quality level combined with a price modification rate to adjust the Net Present Value (NPV) of subsidy requirement based on the quality of bidder proposals in relation to the Target. A set amount is taken off the bidder NPV for every Quality point above the Target, and added to the bidder NPV for every Quality point below the Target. The final tender with the lowest combined NPV – after allowing for any additional equalisation requirements to offset specific risks relating to Scottish Ministers Risk Assumptions - will be deemed by Transport Scotland to be the most economically advantageous. The Programme Board confirmed a rate of adjustment of £1m per Quality point, to be applied above and below a Target Quality level of 70 points (out of a total available of 100).

The approach was preferred over conventional methods that score price using a percentage reference to best price. Given the uncertainty in revenue forecasting for the Caledonian Sleeper franchise, the application of a conventional approach was felt more likely to lead to price having a disproportionate impact on the overall decision.

Detail on how the approach was actually implemented in terms of bid evaluation is provided in Section 4.

3.3. Changes to the risk profile

3.3.1. Confirmation of the need for investment in the Caledonian Sleeper franchise

As was shown in Section 2.3.2, demand and revenue on the Caledonian Sleeper has continued to decline in the first seven periods of financial year 2013/14, following on from the pattern shown in 2011/12 and 2012/13. When combined with some of the key messages from the user and non-user surveys undertaken in 2012 and 2013, along with the bidder forecasts and proposals for how the product and services can be improved, this confirms that continuing the operation of the Caledonian Sleeper under 'Do-Nothing' conditions (e.g. as part of the existing franchise and/or with no investment in the product and services) does not appear to be a viable option. The case for investment and separate operation has therefore been confirmed through the bidding process.

The form that this may take, however, also has implications for the risk profile on the franchise. The business case analysis undertaken prior to bid submission suggested that a wholly new-build scenario did not appear to be a financially attractive option – yet one of the bidders has submitted proposals for a new-build option that is not the most expensive bid, and actually produces the lowest overall subsidy requirement. There are, however, risks associated with this bid, not least of which is the lack of detailed designs associated with the

For Publication

new product. Further details on the proposals and potential implications for the procurement of the new franchisee are presented in detail in the Evaluation Report.

3.3.2. Confirmation of the uncertainty in future year revenue forecasting

The earlier phases of the business case analysis have highlighted the large amount of uncertainty involved in forecasting future demand and revenue on the Caledonian Sleeper franchise. This uncertainty has been reflected in the bidder proposals and affects not just the new franchise period from 2015, but also the starting revenue position of each of the three bidders.

The uncertainty is increased by the fact that each bidder presented a different argument – combined with differing levels of supporting evidence – for the key underlying drivers of demand and revenue on the Sleeper. Moreover, whilst each bidder showed some evidence of market research, forecasting demand response for a new rail product of this nature remains difficult. Bidder proposals for monitoring the key underlying drivers of demand and responding accordingly – along with Transport Scotland's own on-going analysis as part of the Benefits Realisation Strategy – will be a key requirement of the on-going operation of the franchise.

3.3.3. Risk associated with the ORCATS allocation

For several years it has been acknowledged that the rail industry's revenue allocation system - 'ORCATS' - over-rewards Caledonian Sleeper services when dividing 'inter-available' Anglo-Scottish fare-box income. Settlement payments are currently made to compensate for the over-allocation of revenue through the ORCATS system. [redacted text]. However, this is irrespective of the decision to procure the Caledonian Sleeper as a separate franchise.

[redacted text] However, this risk is irrespective of the decision to procure the Caledonian Sleeper as a separate franchise.

With relation to the risk around the ORCATS allocation throughout the franchise period the Scottish Ministers will protect the Franchisee's position in the event of either a successful challenge to the ORCATS allocation or an ORCATS profile change where the Franchisee has robustly defended the challenge in the interests of the Scottish Ministers. Compensation is fixed in all years where the settlement applies at a value fixed in absolute terms at the first year of the franchise value of the commercial settlement or is equal to the value of the commercial settlement in subsequent years if this is lower.

3.3.4. Risk associated with the procurement of new rolling stock as opposed to refurbishment

The received bids contained different proposals for rolling stock: two bidders proposed refurbished, whilst the other proposed wholly new-build rolling stock. The work undertaken prior to receipt of bids had suggested a limited business case for new build rolling stock, yet the leading bid is not the most expensive and actually produces the lowest overall subsidy requirement. The risks around this particular proposal include the lack of detailed designs at bid stage. Final design details may affect the final passenger capacity of different classes of accommodation. These issues create risk in the outturn delivery programme, which may prove to be challenging – being consistent with what is typical of a repeat order for an established UK train design. It also results in uncertainty around some details of the specification of the product that will ultimately be delivered, and the outturn cost of delivering and operating the new fleet of vehicles. Technical advisers took part in the bid evaluation of the new train proposals, which concluded that the delivery and commercial risk is acceptable – indeed to some extent inevitable if the benefits of new trains are to be secured. The leading bidder has provided assurances that it will continue to work closely with its partners to ensure delivery of the new-build rolling stock to agreed timescales and in accordance with the level of specification proposed at bid stage. Transport Scotland will need to monitor progress closely to ensure no subsequent problems with the roll out of the new rolling stock.

3.3.5. Risk associated with the introduction of refurbished traction not previously used for Sleeper haulage

Two bidders, including the leading bidder, proposed the use of Class 73/92 locos. This has risks in terms of the suitability of this type of traction, which is, as yet, untested in the conditions that the Sleeper operates in. There are further risks aligned to this, most obviously related to the ability of the Class 92 (87 mph) locos to recover from delay. Rebuilt Class 73 locomotives are not yet cleared for operation on all Sleeper routes and

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how this will be achieved is not yet finalised. However, the leading bidder has confirmed that it has provided for this process and the principle has been tested with Network Rail as being reasonable.

For Publication

4. Selection of the leading bidder

4.1. Introduction

Section 3 confirmed that the Caledonian Sleeper procurement strategy is based on a broadly equal weighting of Quality and Price. This section summarises how this underlying approach has been used through evaluation in the selection of the leading bidder, the detail may be found in the Caledonian Sleeper Evaluation Report. This section states the basis on which the leading bidder has been selected, together with describing in detail the provisions for ensuring continuing value through mobilisation and franchise commencement.

The process followed for selecting the leading bidder was consistent with that described in detail in the Caledonian Sleeper ITT and Evaluation Methodology. The description in this section is therefore kept to a relatively high level, and is intended to provide context for how the decision on the Most Economically Advantageous Tender was reached, and for the commercial, financial and project management information provided in Section 5, 6 and 7 respectively.

During evaluation, code-names were associated with each bidder in order to protect the commercially confidential nature of the competition and these are also used in reporting. The code names were:

- Loch Ard
- Loch Blair
- Loch Craggie

4.2. Summary of the evaluation process

4.2.1. Quality / Deliverability Assessment

Bidders were required to submit six Delivery Plans. The Part A Plans relate to Bidders' proposals for the capital investment in rolling stock and station enhancements. The Part B Plans deal with operational issues associated with the Sleeper franchise.

Bids have been evaluated in accordance with the EFQM RADAR methodology, which is set out in more detail in the ITT along with a scoring matrix. For Delivery Plans A1, A2 and B1-B3 this requires evidence to be presented by Bidders to demonstrate:

- The levels of *soundness* and *integration* in the chosen Approaches; and
- The extent to which the Deployment of the Plans are *implementable* and *systematic*.

Delivery Plan B4 has been evaluated on the basis of 'Assess and Refine' to determine the robustness and effectiveness of the proposals to measure, learn and improve the chosen Approach and related Deployment Plans.

The Approach, Deployment and Assess & Refine elements have all been scored out of 100 for the relevant sections of the Delivery Plans. The scores have then been weighted on the basis set out in Table 4-1.

For Publication

Table 4-1 RADAR weightings and the relative contribution of individual Delivery Plans to overall Quality score

Delivery Plan	Basis of Assessment (RADAR)	Score	Contribution to Overall Quality Score
PART A			
A1: Rolling Stock Enhancement	Approach (65%) Deployment (35%)	/ 100	35%
A2: Station Enhancements	Approach (65%) Deployment (35%)	/ 100	5%
PART B			
B1: Passenger Experience	Approach (50%) Deployment (50%)	/ 100	20%
B2: Mobilisation, Management & Operations	Approach (50%) Deployment (50%)	/ 100	15%
B3: Retail, Marketing & Branding	Approach (50%) Deployment (50%)	/ 100	20%
B4: Assessment & Refinement	Approach (50%) Deployment (50%)	/ 100	5%

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4.2.2. Financial Assessment

The table below summarises the Price score for each bidder. The table sets out the bid price from tender receipt on 16 December 2013, the incorporation of clarification adjustments, the inclusion of Scottish Ministers Risk Assumptions and the impact of equalisation adjustments.

[redacted table]

All bidders submitted proposals on 16 December that required a Franchise Subsidy from Transport Scotland in order to operate the Franchise.

Following bid submission the final prices for Control Period 5 ('CP5') were published. Each bidder was asked to update its model to reflect the revised prices.

[redacted text]

The Equalised NPV and Price score for the bidders were [redacted text].

4.2.3. Selection of Winning Bid

The Quality / Deliverability Assessment combined with the Financial Assessment formed the basis of ranking the Bidders and identifying the winning Bid. The ranking of Bidders was carried out using a mechanism calibrated to give broadly equal weighting to Price and Quality / Deliverability. This ranking of Bidders was carried out as follows, according to the ITT:

- A Quality score of 70/100 was set as the target quality level.
- For every Quality point that a Bid submission scored above 70 an amount of £1 million was deducted from the Price of the Bid in NPV terms.
- Conversely, for every Quality point that a Bid submission scores below 70 an amount of £1 million was added to the Price of the Bid in NPV terms.
- The Final Tender with the lowest combined NPV was deemed by Transport Scotland to be the most economically advantageous tender.

Loch Blair was identified as the leading bidder.

4.3. Provisions for ensuring ongoing value during mobilisation and operations

4.3.1. Introduction

Bidder proposals for delivering value to Transport Scotland and to the taxpayer are set out in their Delivery Plans and via any associated Committed Obligations. The Committed Obligations provided by the leading bidder are summarised in Section 4.4.2. The leading bidder's approach to ensuring these Committed Obligations – and the overall improvement to product and services set out in their Delivery Plan – is summarised in Chapter 7, drawing particularly upon information contained in Delivery Plan B2 (Management, Mobilisation and Operations).

Transport Scotland also has responsibilities to ensure that the franchisee meets the requirements set out in the ITT and, in turn, the overall franchise objectives. The process for doing so commences now, at leading bidder stage of the procurement process. It does so via the development of a comprehensive Transition Management Plan, which sets out the activities that Transport Scotland will undertake during the mobilisation of the new franchise and in the initial 6 month period of new franchise operations, and a Benefits Management Strategy that sets out how Transport Scotland will monitor and evaluate the performance of the franchise against overall franchise objectives and requirements as set out in the ITT. These elements are described in Chapter 7 of this report, as part of the Project Management Plan.

4.3.2. Committed Obligations proposed by the Leading Bidder

Based on the marked-up template franchise agreement and the bidder's response to evaluation clarification questions, Loch Blair was willing to contract a list of [redacted text]. For the majority of these Committed Obligations including the most significant relating to procuring the New Rolling Stock, more detailed contractualisation for the output and on-going obligations post-implementation of the Committed Obligation has been provided in Schedules 6.1 to 6.3 of the Franchise Agreement. This includes a process for Transport Scotland to have input into the process for finalising the detailed specification and the design for the new rolling stock.

Whilst the Committed Obligations reflect what Loch Blair has said in the Delivery Plans, many by their nature are still subjective regarding exactly what Transport Scotland will receive. However, as Transport Scotland will have input into the detailed specification phase and design phase of the new rolling stock development Transport Scotland will have clarity on what will be received prior to completion of the project. Transport Scotland does not have an absolute right to object, it is limited to non-compliances with the Franchise Agreement, the output specification and defined passenger facing requirements.

The Committed Obligations within the Franchise Agreement cover the elements of the leading bidder's bid that were not core franchise obligations. In particular there is now a contractual basis for procuring and delivering the new rolling stock that provides for Transport Scotland's involvement as the project progresses through to finalising the specification and design for the new rolling stock that was developed through the contractualisation with Loch Blair.

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5. Negotiated deal and contractual arrangements

5.1. Introduction

This section sets out the negotiated deal and contractual arrangements; the services and outputs to be contracted, together with timescales for delivery. It presents key contractual issues identified by the leading bidder in their proposals and/or by Transport Scotland in the subsequent bid evaluation phase, including details of risk allocation between the franchisee and Transport Scotland.

Note: the negotiated deal and contract arrangements described in this FuBC remain subject to contract signature by the leading bidder. They are presented here based on the drafting being exchanged with the Bidder at a late stage in the detailed contracting process.

5.2. Contractual arrangements

Transport Scotland has followed standard industry practice for the contractual structure required to deliver the services and outputs to be contracted. The following diagram summarises the main contractual arrangements that will deliver the new rolling stock solution:

[redacted text]

The diagram demonstrates the main contracts as:

- A Franchise Agreement Suite between Transport Scotland and the leading bidder. These documents set out the contractual obligations on matters such as passenger services, train fleet, service specifications and standards, franchise services, fares, rolling stock and station enhancements, payment and other financial provisions, staff obligations, pensions and the period of the franchise.
- This suite of documents includes a Conditions Precedent Agreement, also between Transport Scotland and the leading bidder, detailing all of the matters that must be addressed between the date of signing the franchise agreement issue of the Certificate of Commencement by Transport Scotland. It also includes a Power of Attorney, allowing Scottish Ministers to exercise specific rights that are transferred to the leading bidder under the Franchise Agreement if necessary in order to secure the performance of obligations.
- A Grant Funding Agreement and Security Package that cover the terms for payment of the £60m capital contribution. These represent additional contractual arrangements put in place for the Sleeper franchise in order to recognise the importance of the Transport Scotland Grant funding for the cost of the new vehicles. In order to support the financial security of the leading bidder's proposals an Intercompany Loan Facility is required from the parent company of the leading bidder. This loan facility amounts to £4m and indexed on an annual basis. In addition a further £4m (in 2014/15 prices) Performance Bond is required from [redacted text] as a third party provider, also subject to indexation.
- The leading bidder will enter an operational lease arrangement with the Rolling Stock Operating Company, Beacon Rail, for the provision of the rolling stock required to deliver the franchise. Beacon Rail in turn has a funding agreement with [redacted text] for the balance of funds required to purchase the new rolling stock from CAF.
- The manufacture of the new rolling stock is covered by a Manufacture and Supply Agreement between Loch Blair and CAF.
- [redacted text]
- In order for Transport Scotland to have step in rights to safeguard service delivery a number of Direct Agreements will be in place. These agreements cover:
  - A Rolling Stock Funding Direct Agreement between Beacon Rail, Loch Blair and Transport Scotland covering the manufacture of the new vehicles. A Train Supply Direct Agreement and a Manufacture and Supply Direct Agreement between CAF and Transport Scotland. Together these agreements provide the step in right of the respective parties in the event of non delivery of contractual obligations.
  - An Operational Lease Direct Agreement between Beacon Rail and Transport Scotland This agreement allows for continued service provision should Loch Blair be terminated as franchisee.

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Further supporting contractual arrangements cover areas such as Service Level Standards, Passenger Charter obligations and bank guarantees.

Grant funding arrangements will be put in place to deal with Transport Scotland's £60m capital contribution in respect of upgrading of the rolling stock.

5.3. Services to be provided and Timescales for delivery

The contracts will deliver the operation of overnight rail passenger services in both directions between London Euston and each of Edinburgh Waverley, Glasgow Central High Level, Inverness, Aberdeen and Fort William Stations. Services will also be required to call at specific intermediate stations between these terminus points within Scotland.

The rolling stock proposal is to introduce 75 new vehicles to allow the full new service to commence in April 2018. The vehicles will be constructed by CAF and leased through Beacon Rail. In the intervening period Loch Blair will [redacted text] the existing Mark 2 coaches from Eversholt and [redacted text] the Mark 3 vehicles from Porterbrook. The responsibilities of the parties to deliver the new vehicles are:

- Loch Blair
  - Overall design specification to meet the needs of the ITT and Franchise Agreement
  - To carry out stakeholder engagement throughout the design period to ensure designs are thoroughly tested, particularly with direct stakeholders such as staff and guests
- CAF
  - To manufacture a train to the desired specification
  - To ensure that the overall specification is compliant with all EU/UK rail regulation for safety and interoperability
  - To manufacture vehicles to the agreed programme
  - To be responsive to stakeholder feedback during the design phase
- Beacon Rail
  - To facilitate the relationship between CAF and Loch Blair to ensure the delivery of the train to the agreed programme and specification
  - To provide in a timely fashion milestone payments

5.4. Key commercial issues and risk allocation from negotiated deal

The contractual arrangement set out a commercial structure and risk allocation that is consistent with the form of rail franchising used throughout the United Kingdom. In recognition of the specific characteristics of the Sleeper service the following specific matters were addressed.

5.4.1. Profit share, profit support and rebasing mechanism

A profit share mechanism will be in place from the start of the Franchise. Transport Scotland will share in the Franchisee's profits above a minimum prescribed level in each year of the Caledonian Sleeper rail franchise. Profits above 7% and below a cap of 15% (pre-shared profit before tax, as set out in the Franchisee's audited accounts) of revenue will be shared 50:50 between Transport Scotland and the Franchisee. Profits in excess of the cap will be placed in an investment fund for reinvestment in the Caledonian Sleeper rail franchise. Decisions in relation to investment will be at Transport Scotland's discretion.

A profit support mechanism will be in place from year 5 of the Caledonian Sleeper rail franchise. Losses incurred from year 5 will be shared 50:50 between the Franchisee and Transport Scotland.

After year 7 an option will be available to rebase the Franchise Payment based on actual revenues and costs during the previous years. In the event that the option is exercised by the Franchisee, the profit of the Franchisee will be revised to 2.5% of revenue. If the option is exercised profits in excess of 2.5% and below a cap of 15% of revenue will be shared 50:50. If the option is exercised by the Franchisee, Transport Scotland will have the right to terminate the Caledonian Sleeper rail franchise on a "No Fault" termination basis;

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5.4.2. Revenue allocation through ORCATs system

[redacted text] With relation to the risk around the ORCATS allocation throughout the franchise period the Scottish Ministers will protect the Franchisee's position in the event of either a successful challenge to the ORCATS allocation or an ORCATS profile change where the Franchisee has robustly defended the challenge in the interests of the Scottish Ministers. Compensation is fixed in all years where the settlement applies at a value fixed in absolute terms at the first year of the franchise value of the commercial settlement or is equal to the value of the commercial settlement in subsequent years if this is lower.

5.4.3. Transport Scotland Capital Contribution

Transport Scotland will provide Loch Blair with a £60m capital contribution towards the provision of new rolling stock. A Grant Agreement covers the commercial arrangements under which the monies will be provided. The agreement includes protections through mechanisms such as:

- Defining the purpose the contribution is to be used for
- Setting a schedule of payment amounts and dates, linked to key performance milestones
- Proscribing the evidence required to support payments and independent third party review required.

In addition Loch Blair are required to provide a security bond of up to £15m for amounts paid by Transport Scotland in the period between signing the franchise agreement and satisfaction of the conditions precedent. Following this date the direct agreements outlined above give provision for Transport Scotland to intervene should there be non performance of contractual obligations.

5.4.4. Authority risk assumptions

[redacted text]

5.5. Contract Mobilisation

In order to deliver the negotiated deal a range of contract mobilisation activities will be required. In terms of the management TS recognise that this will be an on-going task for a mobilisation working group. Regular monitoring will take place through a weekly Project Management Group and a two weekly Mobilisation Steering Group that will report to Rail Board. The approach recognises the ultimate risk that the franchise does not mobilise, bringing major reputational impact for TS. Whilst considered unlikely, such an event would result in the services suddenly become a Section 30 issue. Accordingly, a number of activities have been identified that will be addressed during the period following appointment of leading bidder.

- Section 30 contingency plan - This will include the provisions and planning for what happens in the event the franchisee fails to mobilise successfully.
- ORR Safety and Operator Licence application progress - This is critical to sign off the Conditions precedent for the franchise. The ORR is expected to advise on a minimum number of days for this process, this will therefore a critical path activity.
- ROSCO Direct Agreement (DA) provision – As noted above TS will require that the relevant Direct Agreements are in place for rolling stock and any other Key Contracts.
- Monitor staff communications plan – This recognises the importance to monitor for any industrial relations issues that might arise from the franchise transfer.
- Pension arrangements - As the franchise is being split there will be additional requirements that need to be checked for progress with Trustees and/or setting up schemes.
- Closing balance sheet review – Monitoring will take place to confirm the outgoing franchisee does not carry out inappropriate payments to group before it can release the incumbent from its bond requirements. The bond is the only financial recourse for a franchisee that is no longer in place.
- Communication plan - TS will have a communications plan in place for ministerial and PR communications.
- Agree redacted Franchise Agreement for the public register - TS will agree the redactions with the new franchisee to for the Public Register version of the Franchise Agreement.
- Passenger charter - TS will approve the passengers charter that the new franchise proposes to put in place.
- Disabled Persons Protection Policy (DPPP) - TS will approve the DPPP or equivalent document stipulated in the franchise prior to commencement.

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- Branding - TS will ensure the branding requirements and brand transfer arrangements are adhered to and met noting there may be a need for the Brand to transfer to the new operator.

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6. Financial implications of the leading bid

6.1. Introduction

This section provides the financial forecasts of the leading bidder. It therefore replaces the financial forecasts from earlier business case documents, which focused on Transport Scotland's own financial forecasts based on the franchise Comparator model. For comparative purposes, however, details are provided of the differences between the Comparator and the leading bidder's forecasts. This allows Transport Scotland to confirm that the financial forecasts in the leading bid remain affordable in the context of Transport Scotland's overall rail budget.

6.2. Bidder financial forecasts

Table 6-1 shows the franchise financial forecasts for bidder Blair, updated by the Bidder to reflect clarifications and bid assumptions set out in the ITT. The profile of subsidy payments is shown in Figure 6-1. The corresponding profile of Loch Ard, Loch Craggie and the Comparator are provided for comparative purposes. These are the forecasts from the models resubmitted by bidders during February 2014, which include updated infrastructure charges and Schedule 8 Performance payments to reflect the CP5 rates and benchmarks published on December 20th (four days after the bids were originally submitted). Additionally, Loch Blair's financial model was updated to reflect the removal of the ORCATS revenue adjustment, a bid assumption that Loch Blair had neglected to incorporate as part of its original submission. Transport Scotland's legal advisors have confirmed that the Bidder submission, as clarified to address these issues, may form the basis for bid evaluation. Specific details on the revenue and cost assumptions underpinning the financial forecasts are contained in the bidder Record of Assumptions, with a summary of the key issues being reported in Transport Scotland's Franchise Evaluation Report.

As was noted earlier in this report, the franchise subsidy requirement forecast by Loch Blair is more expensive than that of Transport Scotland's central case forecasts: £187m compared to £166m in the updated Comparator (nominal undiscounted, 15-year franchise lifetime). It is, however, well within the uncertainty band forecast at OBC and FiBC stage, which extended beyond £320m over 15 years.

Figure 6-1 Profile of franchise bid subsidy (£000, nominal undiscounted prices and values)

[redacted graph]

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Table 6-1 Leading Bidder franchise financial forecast (£m, nominal undiscounted prices and values)

[redacted table]

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The figure below provides a summary of the revenues and costs for each bid (and the Comparator) for the full 15-year franchise, confirming the substantially higher cost base – and with insufficient offsetting revenue - for Loch Craggie relative to the two other bidders.

Figure 6-2 15-Year Revenues and Costs (£m nominal undiscounted prices and values)

[redacted graph]

6.3. Implications for Transport Scotland's rail budget

Table 6-2 shows the implications of the bidder financial forecasts in the context of Transport Scotland's rail programme budget. The budgetary/affordability figures are based on information supplied by the Rail Finance team in April 2014 and are subject to ongoing review and updates, with the next significant change likely to follow evaluation of the ScotRail bids. At present, the analysis includes forecasts of ScotRail franchise subsidy based on the updated Comparator model, produced in April 2014.

The affordability data from Transport Scotland cover only those years 2014-19 forming Control Period 5 – and the table below includes only the last four years that are relevant to the ScotRail and Caledonian Sleeper franchises. Transport Scotland will need to make sufficient provision for the franchise(s) beyond this period, based on its on-going rail investment programme, subsequent Network Rail charging regimes, and the final financial forecasts for both the Caledonian Sleeper and ScotRail franchises.

The first three items and figures for the total rail budget were supplied by Transport Scotland's Rail Finance team, who also confirmed that these are on a basis appropriate for combining with projected rail franchise subsidy requirements *less* the costs paid to/from Network Rail within the franchisee. The Network Rail charges provided by the Rail Finance team are based on ORR forecasts of Network Grant and FTAC, but with the Rail Finance team's forecast of variable charges. [redacted text].

The Sleeper capital investment profile assumes £15m of expenditure in the current financial year – when combined with the £45m of investment shown for 2015/16 and 2016/17 this will amount to the full £60m investment in new rolling stock.

The Caledonian Sleeper franchise subsidy forecast is that included in Loch Blair's bid (following clarifications during January and February). The adjustment for bid-level NR charges is the total infrastructure charge included in Loch Blair's bid. It is included as a benefit here to avoid double-counting with the Network Rail Charges figure, which is assumed to cover total infrastructure charges on both the ScotRail and Sleeper franchises.

[redacted text]

The ScotRail franchise subsidy is based on the latest (April 2014) Comparator forecasts. These reflect a 'Baseline with Quality' scenario that assumes a certain level of expenditure by bidders for the ScotRail franchise on meeting base specification requirements, plus an allowance for expenditure to achieve additional outcomes relating to Quality. At the time of completion of this Full Business Case, bids have been received for the ScotRail franchise. Initial evaluation of the financial proposals of these bids suggests that whichever bidder wins the ScotRail franchise, subsidy requirement will be lower than that shown here, to the extent that this would produce a surplus in all four reported years. However, the Comparator forecast is retained in this assessment while ScotRail evaluation proceeds because there remains the possibility of equalisation adjustments being required or other unexpected outcomes from the ScotRail evaluation process. The affordability analysis may therefore be considered a prudent and conservative assessment, with a current expectation that completion of the ScotRail franchise process will deliver an improvement. We therefore recommend that the affordability analysis is reviewed again in July/August when the likely range subsidy forecasts for the ScotRail Franchise will be clearer.

The current forecasts provide a mixed view of affordability: a relatively small net deficit in years 2, 3 and 4 of the franchise, but with the opening year surplus offering potential for reallocation of budget between years to remove almost the entire aggregate deficit. As mentioned above, there is also potential for improvement to the current view, depending on the outcome of the ScotRail franchise competition. Likewise, if [redacted text] risk does not materialise, year 2 & 3 deficit would become a surplus. At the same time, however, there remain downside risks from the outcome of the ScotRail competition [redacted text]. Transport Scotland should therefore continue to monitor and update the affordability forecasts regularly throughout the ScotRail evaluation period and commencement of both franchises.

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Table 6-2 Transport Scotland affordability position based on the Leading Bidder (£m, nominal undiscounted prices and values)

[redacted table]

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7. Project Management Plan

7.1. Introduction

Rather than a straight franchise handover, the CS Sleeper franchise constitutes ceding a new franchise from an element of the existing ScotRail franchise which invokes specific challenges during the transition phase. This section confirms the project management plan for transferring to the new franchise, with a shift in emphasis from the management of the procurement process to the provision of information as to how the mobilisation and operation of the new franchise will be undertaken. The earlier business case documents focused primarily on how the procurement process was currently being managed, then with a look forward to the operation of the new franchise, drawing heavily on the Project Execution Plan. For this FuBC, the emphasis shifts on to how Transport Scotland will manage the project through the mobilisation period, along with details of how the leading bidder proposes to manage the franchise once fully operational.

This Management Plan is intended to assist all parties involved in managing the transition from one franchisee to another to have a clear understanding of the tasks that need to be undertaken, the timelines that are involved, and the individuals who are responsible. Therefore, in the remainder of the chapter the general transition plan from Transport Scotland's perspective is detailed (see section 7.2), the leading bidder's proposed transition plan is set out (see section 7.3) and the regulatory requirements for the transition phase are explained in Section 7.4. Bid documentation for Loch Blair should be consulted for further information on:

- property & contract requirements for franchise transition,
- branding,
- managing people,
- managing IT systems and data changes introduction,
- rolling stock issues
- financial matters
- legal documentation

7.2. General transition plan

7.2.1. Roles and responsibilities during transition

This sub-section presents the key roles and responsibilities of each involved entity during the franchise transition process.

TS Commercial Unit:

- Facilitates the franchise transition process, by guiding all parties involved through it, to enable them to complete their tasks and activities to schedule.
- Ensures that the incoming franchisee fulfils its Conditions Precedent (enclosed as an attachment to the Invitation to Tender (ITT)) before it starts the franchise.
- Ensures the incoming franchisee has plans that enable it to fulfil its Committed Obligations and any requirements of the Franchise Agreement that are due in the first few months of the franchise.
- Works with TS Rail Directorate franchise management to arbitrate on, and resolves, any disputes that arise.
- Works with TS Rail Directorate franchise management to ensure continuity of services to passengers.
- Works with TS Rail Directorate franchise management to ensure there is commercial interaction between the incoming and outgoing franchisees

TS Franchise Management Team

- TS Rail Directorate franchise management works to ensure that the outgoing franchisee complies with the terms of its own Franchise Agreement, including any Last 12 Months (L12M) provisions and the requirements defined for outgoing franchisees later in this guide.

Incoming Franchisee:

- Ensures compliance with and fulfilment of the new Franchise Agreement, Committed Obligations (CO) and Conditions Precedent (CP).
- Mobilises resources to start the new franchise, with TS support as required.

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- Works with the outgoing franchisee to ensure handover arrangements are completed on time.

Outgoing Franchisee:

- Manages the transition activities that are required to be undertaken by the outgoing franchisee.
- Ensures the continued safe running of the railway.

Network Rail:

- Advises all parties on property, access, timetable, infrastructure and rolling stock (vehicle acceptance) issues.

ORR:

- Issues licences and reviews access agreements.
- Reviews and approves the Railway Safety Certificate (RSC).

Rail Settlement Plan (RSP) / ATOS Origin / AEA:

- Transfers IT systems data from old to new franchisee
- Completes the end of franchise financial payments

Pensions Management:

- Effecting all alterations to pension schemes and the transfer of the staff from one scheme to another.

Passenger Focus, Regional Transport Partnerships (RTPs) and Local Councils / Authorities:

- Consulted and informed by TS Rail Policy Team, supported by TS Commercial Unit / franchise operators throughout transition process.

The Outgoing Franchisee's Responsibilities

Input and assistance from the outgoing franchisee is critical to the success of a franchise transition. It is recognised that this can be a difficult time for outgoing franchisee staff and managers, many of whom will need to assist in the transition to the new franchisee. Nevertheless, it is essential that the outgoing franchisee acts to ensure the continued operation of safe rail services, with as little visible disruption to passengers or staff as possible, and works to facilitate a successful transition, by:

- following the tasks and actions identified as being the responsibility of the outgoing franchisee, in the time frames consistent with the franchise handover date. .
- working with the incoming franchisee in an open, honest, constructive and professional manner.
- handing over the franchise as a 'going concern', with all the contracts, assets, staff, information, operational and commercial arrangements necessary to run the franchise in accordance with the Franchise Agreement.
- handing over the franchise as a discrete entity, without the franchise being encumbered by any arrangements with its parent company or other associated companies.
- complying with all requirements of its Franchise Agreement, including all Last 12 Month (L12M) provisions. This includes closing down and signing off previous committed obligations.

An outgoing franchisee is likely to become an incoming franchisee in the future, so it is in the interests of each outgoing franchisee to meet, as much as possible, these requirements.

If the outgoing franchisee is not complying with these requirements, both the outgoing and incoming franchisee should apply the rail industry disputes process to find a resolution.

To enable both incoming and exiting franchisee to work together, and feel confident in their sharing of what may be commercially sensitive information, a Confidentiality Agreement should be signed.

Several areas of practical arrangement between incoming and outgoing franchisee also need to be addressed:

- Use of the outgoing franchisee's staff by the incoming franchisee for preparatory work on the incoming franchisee's behalf: timetable, contracts and planning staff of the outgoing franchisee are likely to be needed to assist the incoming franchisee in preparatory work for the start of its franchise. The outgoing franchisee should co-operate with such requests, providing they do not impair its ability to operate the

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franchise as a 'going concern', and the cost and arrangements should be contained within the Handover Agreement, between the two franchisees.

- The outgoing franchise operator should ensure that the franchise is handed over as a 'going concern', and particularly that the incoming franchisee inherits all information that is necessary for the continued operation of the franchise including safety, maintenance, performance, financial and contractual information.
- Where the outgoing franchisee needs to make financial decisions that have implications in the period of the new franchise, then the outgoing franchisee should involve the incoming franchisee (where the decision is made after Franchise Agreement signature) or involve TS Franchise Management team (where decision is made before Franchise Agreement signature). In general, expenditure that is essential to the continued normal operation of the business (such as maintenance, staff recruitment and training) should continue as if there were no franchise change.

7.2.2. Structure

Immediately following franchise award, TS Commercial Unit (CU) will initiate franchise transition by setting up two groups, both of which to include individuals from the incoming and outgoing franchisee and Network Rail (if required as a non permanent member), as well as TS Commercial Unit. The two groups are:

- A Joint Steering Group (JSG), at director level, to ensure that the transition project runs to plan and that issues of policy are resolved.
- A Project Management Group (PMG), consisting of project / work stream managers from all parties, to ensure that the detailed activities required for transition are carried out and that any unresolved issues are escalated to the JSG.

It is recommended for both meetings that more than one representative attends so that, in the event of holiday or illness, continuity is maintained. However it is not necessary for every representative to attend every meeting.

Project Management Group Members

The relevant TS franchise team, TS Commercial Unit, incoming and outgoing franchisee and Network Rail are the key individuals who will ensure the success or otherwise of the transition. They will be responsible for:

- Managing the transition process.
- Acting as the central point of contact within their organisations.
- Representing the interests of their organisations.

The Mobilisation Manager of the incoming franchise should, ideally, have a vested interest in the future of the organisation – for instance, is a senior manager.

Good relations and frequent communication between the groups is the key to a successful transition, and the members of this group should have:

- The authority to take decisions on the detail of the transition on behalf of their respective organisation.
- An immediate route to a Director of the organisation in the event that a more far-reaching decision needs to be taken.
- The confidence of other members of the organisation in delivering their responsibilities.
- The ability to think and act in terms of the success of the transition and the continued delivery of services to passengers, rather than solely in the interests of their organisation.

Interfaces with the Incoming franchise operator Transition Team

It is the responsibility of the incoming franchisee to 'mobilise' in readiness for operating services on day one of the franchise. Neither the PMG nor the JSG should undertake transition activities as these are the responsibility of the incoming franchisee. Both groups should focus on the co-ordination of activities across the different organisations, and adherence to timescales, to ensure a smooth transition.

Progress on transition activities undertaken by the incoming and outgoing franchisee, Network Rail, TS and other parties should be reported to the PMG, so that it can adequately manage the process and escalate issues to the JSG. This is done by a weekly review of the project plan at each JSG meeting.

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Project Documentation
The incoming franchisee Transition manager should keep both the JSG and PMG informed of project progress, assumptions made, and issues arising through a project plan, assumptions & risk register and issues log:

The **Joint Transition Project Plan** should be a high-level overview of key activities, incorporating common planning elements from TS Rail Directorate, incoming franchise operator, outgoing franchise operator, Network Rail etc. It should show:

- how they fit together.
- any key dependencies.
- the critical path.
- allow for internal sign off procedures.

To develop this plan it is recommended that all parties spend a half-day planning session to share migration plans and issues and agree ownership for each. An overall checklist should be produced to ensure no key items are missed / slip.

Progress against the dates in this should be reviewed frequently and potential slippage or issues highlighted to the JSG / PMG.

The **assumptions register** should list all assumptions that the incoming franchise operator is making about the existing franchise operator's business and the transition process – for instance, about IT systems and infrastructure, staff, property or rolling stock. The purpose of this is to provide all parties with a list of assumptions that can be 'reality checked' as the transition progresses. It should be revised continuously throughout the transition and circulated to the JSG / PMG for each meeting.

The **issues log** should list all key issues that are outstanding in the transition process, and be circulated to the JSG / PMG meetings, where the issues can be resolved. Again, this will be a living document and will change as issues are resolved and new issues arise.

The **risk register** will contain all those risks identified at the OGC Gateway reviews and of which the JSG / PMG should be aware, plus the known risks to each transition project see below. Each risk should have an owner identified from the JSG and the proposed course of action should the risk materialise.

Issues escalation
The PMG should aim to manage as many of the transition issues as possible. Where it cannot jointly resolve an issue then:

- TS Transition Team should provide guidance.
- The issue should be escalated to the JSG.
- The issue should be referred to an expert for resolution.

The JSG should be able to resolve most issues that are passed to it by the PMG, except where a major policy issue arises and there needs to be reference to board members / directors.

Key risks and issues for the transition
The transition faces three key risk areas throughout, and both the JSG and PMG should keep a clear focus on minimising these risks:

- **General timetable slippage:** all transitions have tended to suffer from transition activities 'bunching up' towards the end of the transition process. This increases the strain on a small number of individuals and adds unnecessary risk. The Transition Plan is intended to help avoid this bunching by spreading transition activities more evenly.
- **Lack of control over external events:** a successful transition requires many third parties – Rolling Stock Leasing Companies (ROSCOs), suppliers, ORR etc. – over which the Transition Team does not have direct control, to complete tasks / agree to terms in certain timeframes. Major risks to transition will be a failure to obtain the Safety Certificate and Operating Licence - without these a franchisee cannot operate.
- **Poor project management:** there should be total focus on those activities that are essential to day one operations, with all other activities being regarded as secondary. If there is not then the critical path is not clearly identified and limited resources are not used as efficiently as they might be.

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All those concerned with the transition project should be aware that the incumbent franchisee is running a railway at the same time and that many of the individuals who are required to help with transition are also performing other, safety-critical, roles and need to maintain a functional railway.

Setting up the JSG and PMG
Soon after franchise award the TS Commercial Unit Team will meet separately with both the incoming and outgoing franchisee teams to:

- Discuss any issues or concerns that either party has about the franchise – such as with rolling stock, property, contracts, staff, safety certificate, pensions, IT etc.
- Explain the process for transition and responsibilities / meeting frequencies etc. A copy of the TS transition plan and a copy of the DfT franchise transition guide (which contains much information which is also relevant in Scotland) may be given to the outgoing and incoming franchisees.
- Confirm that the incoming franchisee is preparing to submit a 'Safety Certificate' application (note that ORR may need in extremis 120 days plus 28 days for consultation to complete their safety review - therefore an early submission of the application is essential).
- Confirm that the incoming franchisee is preparing to submit an application for an 'Operating Licence', ideally within two days of franchise award. ORR requires 112 days to carry out their due diligence work prior to issue of a licence.

Ideally, within two weeks of Franchise announcement:

- Both the JSG and PMG have met for the first time and established agendas, scope and frequency of meetings.
- TS CU Transition Team has talked both groups through franchise transition generally, and will have listed any OGC Gateway review recommendations in the joint risk register.
- Both incoming and outgoing franchisee representatives, TS Rail Directorate Franchise Management and TS CU, will have held a planning half day, producing an assumptions register and issues log.
- The incoming franchisee transition manager has presented the global transition plan, assumptions register and issues log to both the JSG and PMG.

7.2.3. First contact

- A kick-off meeting with the new franchisee, which TS Commercial Unit, along with the relevant TS Rail Directorate Franchise Management Team.
- A kick-off Joint Steering Group meeting with the new franchisee and the incumbent franchisee, which TS Commercial Unit attends along with the Franchise Management Team.

7.2.4. Briefing of TS Rail Directorate Team

Following the announcement of the Franchise Award, TS Commercial Unit will brief TS Rail Directorate so that the transition can begin.

The briefing from TS Commercial Unit to TS Rail Directorate consists of:

- A briefing meeting with the Project Team, external advisers used during the negotiations and sponsor. The meeting discusses the new Franchise Agreement.
- A briefing meeting to look at the new financial model with TS Commercial Unit, the financial advisor, TS Rail Directorate Franchise Management and TS Rail finance manager.

The briefing meeting will be arranged by TS Commercial Unit, within 4 days of the contract being signed. TS Rail Directorate Franchise Management Team should contact TS Commercial Unit if no meeting has been arranged by day 5.

7.2.5. Setting up the Transition – Timings and Communication

Setting up the JSG and PMG
As soon as the successful bidder is announced TS CU Project Manager and TS Franchise Manager should meet separately with both the incoming and outgoing franchise operator teams to:

For Publication

- Discuss any issues or concerns that either has about the franchise – such as with rolling stock, property, contracts, staff, safety certificate, pensions, IT etc.
- Explain the process for transition and responsibilities / meeting frequencies etc. A copy of the transition plan may be given to the outgoing and incoming franchisees.
- Confirm that the incoming franchisee is preparing to submit a 'Safety Certificate' application (note that ORR may need in extremis 120 days plus 28 days for consultation to complete their safety review- therefore an early submission of the application is essential).
- Confirm that the incoming franchisee is preparing to submit an application for an 'Operating Licence', ideally within 2 day of franchise award. Again, ORR require 112 days to carry out their due diligence work prior to issue of a licence.

Ideally, within two weeks of the successful bidder being announced:

- Both the JSG and PMG have met for the first time and established agendas, scope and frequency of meetings.
- TS Project Manager has talked both groups through franchise transition generally, and will have listed any OGC Gateway review recommendations in the joint risk register.
- Both incoming and outgoing franchise operator representatives, as well as TS Project Team and Network Rail, will have held a planning half day, producing an assumptions register and issues log.
- The incoming franchise operator transition manager has presented the global transition plan, assumptions register and issues log to both the JSG and PMG.

Communicating the Successful Bidder and Transition Process to Other Parties
A number of other organisations need to be informed of the transition process, ideally as soon as possible. Actions to be taken are as follows:

- Franchise Procurement Manager - advising ORR of the franchise award and that a financial review has been carried out in accordance with the agreed process. This will inform ORR for the issue of the 'Operator's Licence'.
- Office of Fair Trading (OFT) - they should contact the incoming franchisee with a request to complete a **Rail franchise acquisition information pro-forma** but this action should be checked by the Mobilisation Manager.

TS Commercial Unit will aim to inform other relevant bodies – such as RSP, RPS, Network Rail, and other franchise operators and owning groups – that the successful bidder has been chosen, about the transition process that is being followed and who the key contacts are, within one week of successful bidder announcement.

The incoming franchisee should prepare a stakeholder presentation to be presented to Passenger Focus, Local councils, RTPs etc. once the Franchise Agreement is signed.

The outgoing franchisee should continue to manage and be responsible for day to day communications / enquiries from external stakeholders, until transition is complete.

7.2.6. Condition Precedent Review

Background
Each Franchise Agreement has an agreed Condition Precedent review date. This review date is normally four weeks before the start of the Franchise. All parties should be aware of this review date and familiar with the requirements shortly after announcement, including making early arrangements with the incoming Franchisee. This review allows the incoming franchisee to present documentation to satisfy Transport Scotland that the Conditions Precedent are likely to be satisfied by the start date.

Once the review is complete, the incoming franchisee should be informed of the outcome of the review. Transport Scotland can, by notice to the Franchisee,

1.) Waive any relevant condition;

i) set a new Review Date;

ii) set a new Review Date and a new Start Date;

For Publication

iii) set a new Start Date; or

2.) Terminate the Franchise Agreement following an Event of Default as defined by the governing legislation.

Transport Scotland may also decide, depending on the level of engagement from the incoming franchisee, that further reviews are required.

Timeline

- T-40: TS confirms date of Conditions Precedent review as specified in the Franchise Agreement. CP Review notification letter sent to incoming Franchisee.
- T-35: Transport Scotland CU should contact Legal and make arrangements for the formal CP review. Inform incoming franchisee of review details via e-mail.
- T-33 TS should receive formal CP report from incoming franchisee.
- T-30: TS undertakes review.
- T-28: Issue formal minutes and letter outlining review outcome. As part of this letter Transport Scotland should include an action that at each remaining PMG there will be a formal review of the CP and that the incoming franchisee should compile a folder of documentation to support the CP completion.

Contingencies in the event that Conditions Precedent are not satisfied by the Franchisee during Transition

It is a requirement that the Franchisee must achieve a number of Conditions Precedent during the Transition phase in order for Transport Scotland (on behalf of Scottish Ministers) issue the Commencement Certificate. Should the Franchisee not satisfy the Conditions Precedent, then Transport Scotland may either choose to waive the Conditions Precedent and issue the Commencement Certificate, or terminate the Franchise Agreement.

In the event that Transport Scotland decided to terminate the Franchise Agreement in such circumstances, then it would have a number of options open to it as follows:

- [redacted text].

To safeguard Scottish Ministers and Transport Scotlands' interests, the Conditions Precedent Agreement has been drafted with interim monitoring of the satisfaction of the Conditions Precedent during the course of the Transition Phase.

7.2.7. Section 30

Section 30 of the Railways Act 1993 places a duty on the Scottish Ministers to provide, or secure the provision of, services for the carriage of passengers by rail where a Franchise Agreement in respect of the services is terminated or otherwise comes to an end but no further Franchise Agreement has been entered into in respect of the services.

In the event that the new franchise fails to mobilise or if the team identifies a potential event of default, the Transport Scotland Commercial Unit will contact the Transport Scotland Rail Director, and at the earliest opportunity convene a meeting of the Scottish Rail Franchising Programme Board.

7.3. Leading bidder's transition plan

7.3.1. Overview

This franchise mobilisation is unusual in that it requires the extraction of a business unit from a larger franchise and its transformation into a new TOC, rather than the transfer of an existing rail franchise from one franchisee to the next.

Therefore, the migration and mobilisation of the Caledonian Sleeper franchise is a complex task that requires strong and experienced management. The following sub-sections give an overview of the migration and mobilisation management organisation (sub-section 7.3.2), the governance and management process (sub-section 7.3.3) as well as the transfer of staff (sub-section 7.3.4).

7.3.2. Migration and Mobilisation Management Organisation

Therefore, the management organisation designed to lead the franchise transition activity requires a greater level of expertise and breadth of ability than would normally be required for a business of this physical and

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financial scale. Loch Blair will provide the high level of expertise and experience required by creating a single Migration and Mobilisation Team, (MMT), drawn from two sources:

- The Caledonian Sleeper Bid Team – bringing hospitality sector, customer experience, rail industry and franchise specific knowledge and experience
- Loch Blair's Transformation Team – bringing specialist migration and mobilisation expertise.

The resources and structure of the MMT are shown in Figure 7.1.

Figure 7-1 Resources and structure of the leading bidder's MMT

[redacted figure]

The roles, responsibilities and required skills / experience of MMT members are shown in Table 7-1 below:

Table 7-1 Roles and responsibilities of the Mobilisation and Migration Team (MMT)

[redacted table]

7.3.3. Governance and management process

Overview

Good governance and management processes are fundamental elements of Loch Blair's approach to migrating and mobilising the Caledonian Sleeper franchise. It is clear that current governance and management processes are, unsurprisingly, geared towards the main ScotRail operation rather than providing a strong focus on the Caledonian Sleeper business. Therefore, new governance and management processes that are appropriate and effective for a sleeper franchise must be put in place.

Loch Blair has stated in its bid that "from the announcement of Leading Bidder, we will put in place governance arrangements and management processes that:

- facilitate the migration and mobilisation of the Caledonian Sleeper operation from the ScotRail franchise into a stand-alone franchise
- provide the assurance, information and visibility Transport Scotland require throughout the mobilisation period into normal business
- keep all stakeholders engaged and informed."

It is worth noting that no such 'preferred bidder announcement' will actually be made by Transport Scotland, and that the above arrangements will not happen until contract award.

Loch Blair states that is has "unrivalled experience of successfully migrating and mobilising businesses across a broad range of services which will be used to best advantage in mobilising the Caledonian Sleeper franchise."

The management organisation detailed in Section 7.3.2 will work within the governance structure shown in Figure 7-2, below.

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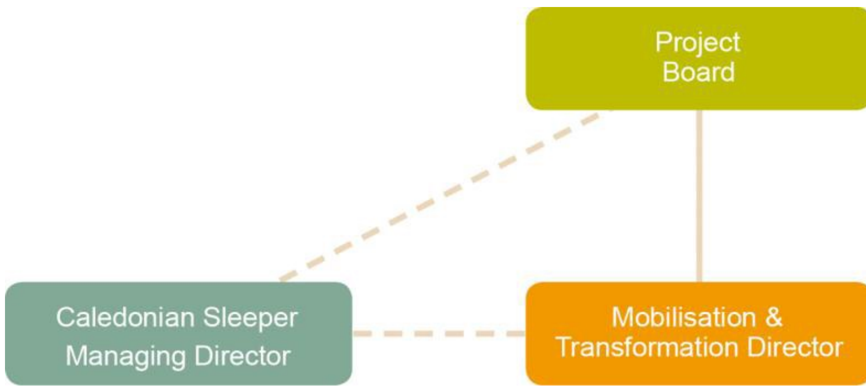
Figure 7-2 Governance structure



Project Board

The Project Board is the Loch Blair corporate entity with overall responsibility for ensuring the franchise is migrated and mobilised effectively and has the following composition set out below.

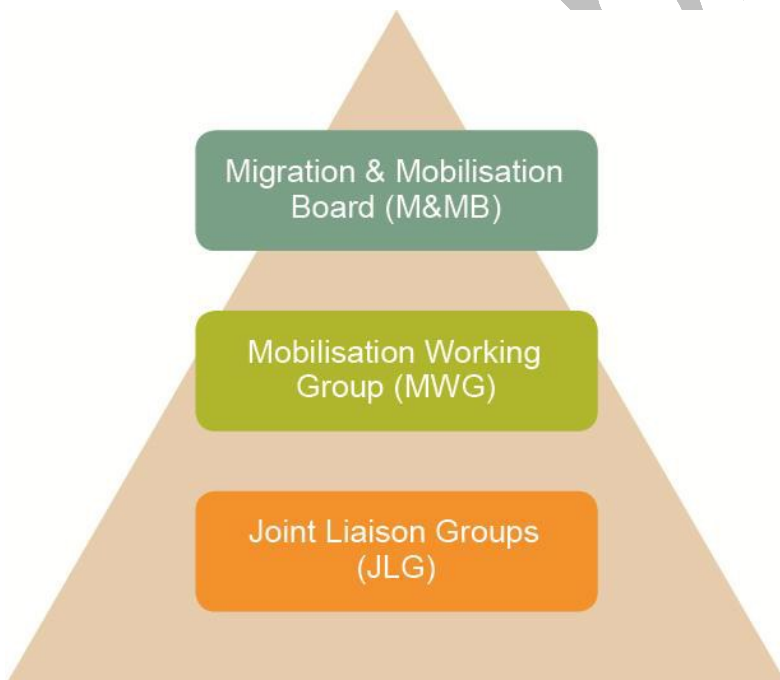
Project Management

The migration and mobilisation of the franchise will be managed as a project using a methodology that is compliant with PRINCE2. This process is already well advanced, during the bid Loch Blair has built a detailed Migration and Mobilisation Project Plan to assure themselves of costs, the resources required and deliverability of our plans.

Meeting Structure

Loch Blair believes that an effective meeting structure is a key governance tool by creating the rhythm in a project bringing together the right parties to progress issues.

Figure 7-3 Mobilisation Meeting Hierarchy



While Loch Blair recognise that they bear ultimate responsibility for the mobilisation of the franchise, they will ensure Transport Scotland and the incumbent franchisee are fully engaged in the mobilisation and contribute to its governance through participation in structured meetings.

Figure 7-3 shows the meeting hierarchy we will use during migration and mobilisation.

Migration & Mobilisation Board (M&MB)

This is the top level group responsible for steering the migration and mobilisation of the franchise and fulfils Transport Scotland's requirements as detailed in paragraph 4.4.2.1 of the ITT. The group will be chaired by Loch Blair's Mobilisation and Transformation Director. The M&MB's role is to lead the strategic work of migration and mobilisation and to act as the deciding body if agreement cannot be reached at a lower level.

Mobilisation Working Group (MWG)

This group will be made up of representatives from Loch Blair and the incumbent franchisee. It's role is to carry out the tactical work of migration and mobilisation reporting back to the M&MB.

Joint Liaison Groups (JLG)

These groups will be formed by the MWG to manage detailed subject specific issues where additional focus is required. The groups will report to and be directed by MWG.

7.3.4. Transfer of staff

The transfer of employees to the Caledonian Sleeper franchise is one of the key elements for a successful mobilisation. It also sets the tone and establishes the values and foundations for the transformation's credibility during the transition phase and the franchise going forward. Loch Blair sees the benefits of a smooth TUPE process as set out in Table 7-2.

Table 7-2 Benefits of a successful TUPE transfer and mobilisation of staff

New Franchisee	Staff	Stakeholders
• Skilled and experienced workforce populates the business • Identification of gaps in staff numbers and skills • Starts the process of employee engagement • Opportunity to demonstrate values and performance • Key positions populated with prepared staff • New leadership team engaged	• Certainty about future • Engagement with new employer • Reassurance about key terms and conditions • Early visibility of changes • Engagement and relationships with new leadership	• Confidence around service continuity • Positive engagement with trade unions and early mobilisation of new collective agreement

7.4. Regulatory requirements for transition

7.4.1. Obtaining the rail safety certificate (RSC)

Background:

To obtain a safety certificate or authorisation the Railways and Other Guided Transports (Safety) Regulations (2006) (ROGS) requires an applicant to submit evidence of its safety management system (SMS) to the ORR, thereby demonstrating its ability to operate safely. This means that the ORR assessment will be taken at a higher level than under the previous rail 'safety case' regime. ORR will validate the SMS through a process of inspections to validate the evidence provided in the SMS.

The statutory timescale for the ORR to complete the assessment of the application for a safety certificate/authorisation is 28 + 120 elapsed days. However, the franchise transition period is normally no longer than 120 elapsed days. Clearly, the time required by ORR to complete their assessment of the application is likely to be longer where there has been a change in the franchise map and/or the SMS. Where there is no change in the franchise map, or in the franchise SMS structure, then it should be possible to complete the process in a shorter time. In these circumstances, ORR would have little assessment to carry out.

Another circumstance that could influence the assessment time needed by ORR involves the transition arrangements provided by ROGS. If the incumbent holds a deemed Safety Certificate/Authorisation (SC/A), then the new franchisee can 'adopt' that SC/A for a period of 6 months before requiring a full SC/A.

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Although this scenario is a possibility, it should not be relied upon and each new franchisee should start from the assumption that a full application will be required.

To assist the SC/A review it has been agreed that TS Procurement will provide a copy of the ITT to the ORR after its release to bidders.

The incoming franchisee should assume that the timeline above applies unless otherwise informed by the ORR.

Before the new franchisee is announced:	After the new franchisee is announced:
• All bidders should consult with the ORR area team to identify the major issues and risks that could delay the issue of the SC/A prior to the franchise start date.	• the incoming franchisee should submit an application for a SC/A to the ORR within 3 working days of the winning bidder being announced and • ORR has statutory 120 plus 28 elapsed days to assess the application for a SC. However, with the co-operation of TS and the incoming franchisee they would, under normal circumstances, expect to complete the process prior to the franchise start date. • For SC/A where there are no changes to the SMS and operations on day 1 the ORR may be able to review and issue the SC in less than 117 days – but there is no commitment to this and it should not be relied upon.

Managing the progress of the SC/A:

- The new franchisee Director of Safety and the ORR Project Manager should meet as soon as practicable after the Franchise Agreement has been signed and the application for a SC/A has been submitted to address any issues that may delay the review process.
- The new franchisee and ORR should meet as required (ideally, monthly) throughout the transition process until the ORR has issued a SC/A.
- The new franchisee should advise at each meeting of the PMG any issues that may delay the issue of the SC/A by T-5.
- The incoming franchisee should not make any changes to the nature of the operation after the application has been submitted to the ORR, without prior discussion and agreement of both the ORR and TS

Timeline:

T-170 or earlier: Bidders encouraged to discuss safety certificate issues with ORR area team.

T-117: Incoming franchisee submits application for RSC to ORR.

T-5: ORR issues RSC.

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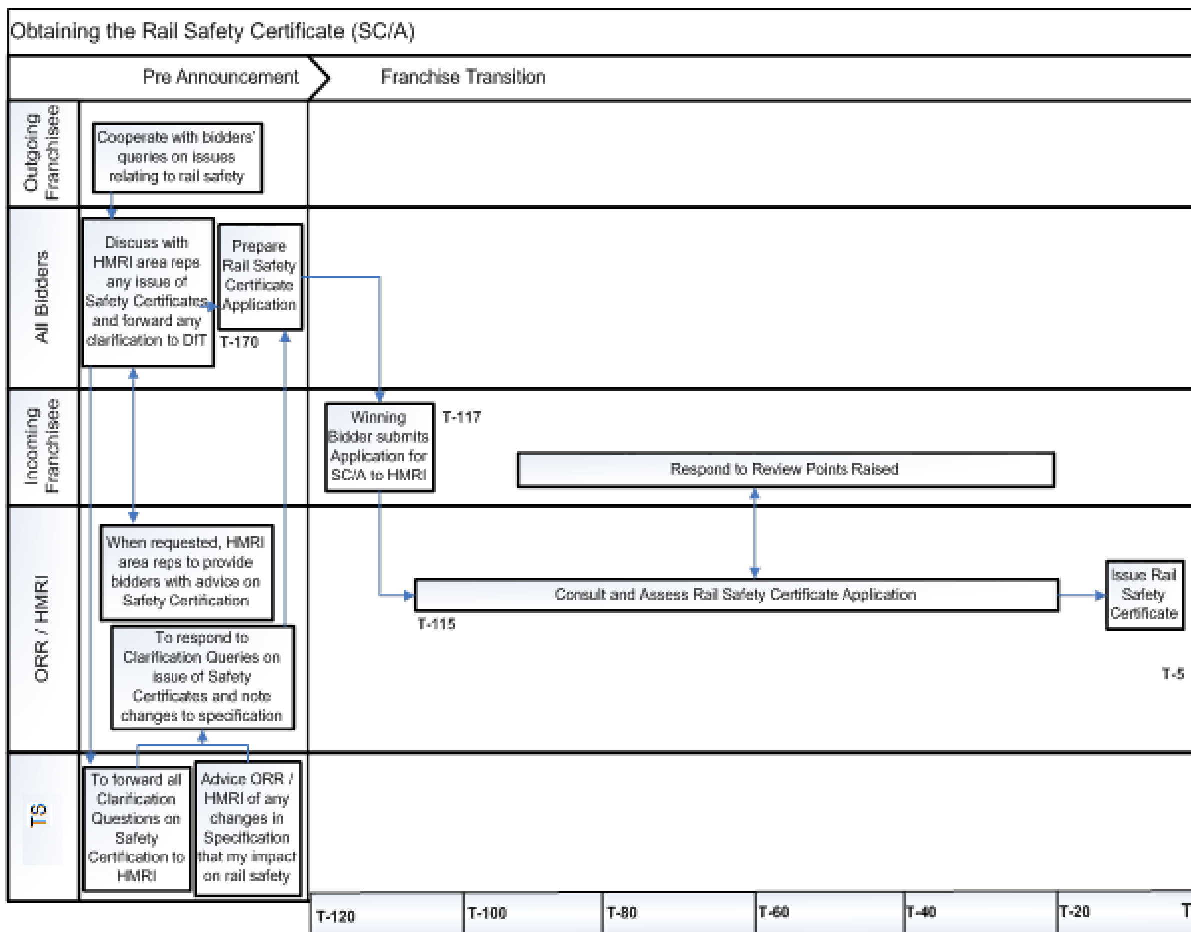

[redacted text]

7.4.2. Obtaining operating licences / statement of national regulatory provisions (SNRP)

Background:
Licences to operate train services/railway assets are required before franchise operations can commence. The types of licence usually required, depending on the type of operations, are:

1. European passenger train licence and an associated SNRP
2. Non-passenger train licence (but only if operating trains other than passenger or freight trains)
3. Station licence
4. Light Maintenance Depot (LMD) licence or licence exemption
5. Network licence or licence exemption if operating any networks, sidings etc.

Not all operators will need all of these licences – for example, Caledonian Sleeper Franchisee is unlikely to be a station operator so does not require a station licence.

Broadly speaking, it is the responsibility of:

- The incoming franchisee to apply to ORR for the required licences and SNRP; and licence exemptions as appropriate.
- Transport Scotland to approve the Disabled Persons Protection Policy (DPPP), Complaints Handling Procedure (CHP) and ticketing arrangements, and to confirm the incoming franchisee's financial fitness.
- ORR to consider third party liability insurance, good repute, and professional competence (which links to ROGS applications) and to liaise with Transport Scotland on financial fitness.
- ORR to decide whether to grant the licences and SNRP.

Licence holders are required to enter into a Police Services Agreement by a Statutory Instrument made under the Railways and Transport Safety Act 2003.

Timeline – Obtaining Operating Licenses

- T-120 or earlier: Incoming franchisee downloads the licence application pack from the ORR website, and contacts TS for current guidance on CHP and DPPP requirements.
- T-120 to T-90: bidders should contact ORR if they require assistance in completing their application. ORR recommends early contact is established in any event.
- T-120 to T-90: bidders should contact TS to discuss DPPP, CHP and ticketing requirements.
- T-90: incoming franchisee submits licence application to ORR. ORR requires 3 months to process and approve applications. The application will need to contain information on the company that is intended to run the franchise, its directors and the reputational position of the company and its parent company. As part of the application, the incoming franchisee will also need to demonstrate compliance with relevant licence conditions, including third party liability insurance and CAHA membership.

Note: if successful bidder announcement not yet made then all bidders MUST submit licence applications to ORR at this time.

- T-90 application: made, but ORR must be informed at any time if there are any changes to information in the application form or subsequently provided (ORR may need up to 12 weeks to consider these).
- T-88: ORR copies application to TS within 2 working days of receipt from incoming franchisee
- T-80: Incoming franchisee to submit DPPP and CHP to TS for approval, and secure participation in ticketing arrangements and the industry CAHA. Admission to CAHA is arranged by the CAHA Registrar. The ticketing arrangements normally include the Ticketing and Settlement Agreement, the National Rail Enquiries Scheme and certain other Schemes administered by ATOC.
- T-70 (or earlier): TS confirm to ORR that incoming franchisee has been assessed as financially fit.
- T-70 (approx): ORR starts 4 week statutory consultation on licences, assuming it is minded to grant the licences.
- T-42 (approx): end of 4 week statutory consultation period.
- T-35: If no successful bidder announced, ORR must start 4 week statutory consultation on all bidders in order for franchise start date to be achievable.
- T-30: Recommended deadline for approval of DPPP, CHP plus verification of participation in CAHA and ticketing arrangements. Also recommended deadline for incoming franchisee to submit details of third party insurance arrangements to ORR.
- T-12: ORR should have received confirmation that all day-one requirements have been met and, should have issued any necessary safety certificate or authorisation. ORR needs 5 working days from final receipt of information to grant licences
- T-5: ORR makes final decision on application.

Notes: The outgoing franchisee may contact the ORR directly to request the revocation of their licences. In practice the outgoing franchisee may seek SoS consent first before asking ORR to revoke its licence. Under Section 8(6) of the Railways Act a licence (i.e if passenger, network, station and light maintenance) cannot be surrendered without prior consent from the ORR and the SoS for Transport. It critical that the ORR and the SoS grant such consent **only after** the incoming franchisee has been issued with its own relevant licences. This process can take approximately eight days from the new franchise start date.

7.4.3. Disabled persons protection policy (DPPP)

Obtaining DPPP Approval

The Operator must produce a DPPP regarding the provision of services for disabled people. It must detail the arrangements, services and procedures that they will commit to and thus the level of service disabled people can expect when they use the applicant's trains and/or stations.

The Operator's DPPP must be approved by TS and Passenger Focus before a Licence can be granted by the ORR. A first draft document should be submitted to TS and Passenger Focus as soon as possible after application for the Licence to enable advice to be given and any revisions made to gain approval. The DPPP must then be revised annually, and the revised versions re-submitted to TS for approval.

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7.4.4. Obtaining Station and Depot Access Agreements (SAA & DAA)

Access agreements between a station or depot Facility Owner and a beneficiary who wishes to have access to the facility must be approved by ORR. If ORR does not approve an access agreement, or any changes to it, the agreement is void. Further information can be obtained from ORR's website at http://www.rail-reg.gov.uk/server/show/ConWebDoc.6821, for stations and for depots.

Timeline for new SAAs / DAAs (where there is minimal change to the access arrangements):

- Before T-60: incoming franchisee should:
  - identify SAAs and DAAs required.
  - identify DAAs that are evergreen[4].
  - decide on plans to arrange the SAAs / DAAs (e.g. all stations on one access agreement or separate access agreements for each).
  - decide whether any changes are required to the access arrangements (e.g. for exclusive services such as despatch from stations)[5].
  - identify whether there are any situations where a lease is not in place and if so, discuss the matter with Network Rail as a matter of priority.
  - identify charter and freight access arrangements in place with the incumbent franchisee and decide whether to replace these with new agreements or roll them forward by transfer scheme, once the expiry date has been amended.[6]

- T-90 to T-60: incoming franchisee should liaise with ORR Stations and Depots team to discuss proposals for SAAs / DAAs (ORR has produced a number of template agreements and these can be found on ORR's website at http://www.rail-reg.gov.uk/server/show/ConWebDoc.6821 for stations and depots.
- T-35: latest date by which incoming franchise operator must submit SAA[7] and DAA application to ORR.
- T-5: ORR directs and grants approval on proposed SAAs and DAAs.

Note: where the incoming franchisee is to be a beneficiary at another franchisee's station / depot, then it is the other franchisee as the station or Depot Facility Owner that should lead the process and apply to the ORR for change to the station / depot access arrangements, within the timescales above. However, it is recommended that the incoming franchisee assists any other franchisees of whom it is a beneficiary in meeting these timescales.

Timeline where there is more substantial[8] change:

- T-120: incoming franchisee should submit draft of changes to ORR.
- T-120 to T-60: incoming franchisee should liaise with ORR Stations and Depots team to discuss how it plans to arrange the SAAs / DAAs (e.g. all stations on one access agreement or separate access agreements for each); whether there are any changes planned to the access arrangements (e.g. for exclusive services such as despatch from stations); and whether there are any situations where a lease is not in place.
- T-45: latest date by which incoming franchise operator must submit SAA and DAA application to ORR, and by which exclusive services are agreed.
- T-5: ORR directs and grants approval on proposed SAAs and DAAs.
- If existing SAAs / DAAs are due to expire, it is also an option to extend them for a set period into the new franchise and scheme them across to the incoming franchisee who can apply for new SAAs / DAAs after the franchise has begun. (see footnote 3)

Depot connection agreements:

Depot connection agreements – which outline the connection arrangements between a franchisee's depot and TS – also tend not to have expiry dates, and may therefore be schemed across as part of the transfer scheme.

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[4] i.e. do not have an expiry date. These DAAs may be included in the transfer scheme
[5] If changes are required then the incoming franchisee should provide drafts at this stage
[6] This will require an application under section 22, before the end of the franchise, in order to amend the expiry date.
[7] Station Access Agreements require a 'retrofit' clause to allow for the change to the new Stations Code, which will happen gradually up to April 2006. The ORR will discuss with the incoming franchisee where this applies and what the change date to the new Stations Code should be.
[8] Such as a performance regime change

Where they are due to expire at the end of the franchise, and incoming franchisee should submit applications for extension to the ORR no later than 30 days before the new franchise starts.

7.4.5. New, Extended and Combined Track Access Agreements (TAA)

General Background:
Prior to commencing franchise services the incoming franchisee must be party to a TAA with Network Rail. TAAs must be approved by the ORR.

The transition activity on TAAs varies according to the duration of the existing TAA, whether the franchise is being remapped, and whether (and when) there is a change to the passenger timetable.

Because the franchise is being remapped, then a new TAA is needed, so that the new franchisees' rights do not overlap with those of another franchisee.

There is also likely to be a change to the passenger timetable within 18 months of the new franchise starting so it may be necessary for amendments to be made to the existing TAA, or a new TAA to be sought by or on behalf of the incoming franchisee. This will depend largely on the date of franchise commencement and its relationship to the Network Rail industry timetable development process.[9] TS have not planned for the franchise to start at the same time as a change to the passenger timetable – there will be at least one 4-week period between the start of a franchise and any change to the passenger timetable in May 2015.

ORR timescales for considering track access application are set out in paragraph 3.46 of its Criteria and Procedures for track access contracts[10]. ORR encourages potential franchisees to seek advice from them regarding process and timescales, and encourages all applicants or potential applicants to maintain a dialogue with ORR and seek pre-application meetings.

Franchise map changes – new combined TAA required
As the franchise map is changing, a new TAA is likely to be required from the first day of the new franchise (though it may be possible to amend the TAA which covers the largest component of the new franchise, ScotRail). It is not possible to run several existing TAAs in parallel, because they will not accurately reflect the new TOC-on-TOC performance relationship, and because it is impossible for the same access rights to be contained in two 'live' TAAs. Because a new TAA needs its performance regime recalibrating by Network Rail, this is a considerably longer process than for a straightforward extension of an existing TAA.

Timeline:
- T-210: franchise map / services agreed – this is the basis for Network Rail's recalibration.
- T-210 to T-130: commissions recalibration work which requires 12 weeks to be completed.[11] Network Rail and, TS /incumbent franchisee negotiate TAA application.
- T-130: Network Rail led industry consultation (Network Rail posts application on its website where bidders for the franchise and other consultees will be able to see it).
- T-90 Network Rail and TS /incumbent franchisee submit TAA application to ORR[12].
- T-90 to T-5: ORR considers the application.
- T-5: ORR issues directions.

Where the passenger timetable changes within 18 months of the franchise start date – amendments to existing TAAs or new TAAs
Where there is a requirement for timetable change at the next Passenger Change Date (usually May or December) – and TS requires the franchisee to have its bids for timetable paths treated with top level priority in the timetable development process – then ORR must approve the associated track access rights before the Priority Bidding Date (PBD) that occurs in January or February prior to the Principal Change Date in

[9] More information on the timetable process can be found in Network Rail's annual Network Statement.
[10] ORR's Criteria and Procedures document can be found on their website at http://www.rail-reg.gov.uk/upload/pdf/386.pdf.
[11] Where a franchise is being split as is the case for the Caledonian Sleeper and ScotRail, the track access fixed charges should be apportioned on the basis of train miles. This calculation will be completed by Network Rail and validated by the ORR.

[12] The ORR requires at least 18 weeks to consider a TAA. If a major holiday falls within this time period, if the TAA presents novel or complex issues, or if a large number of TAAs are submitted simultaneously ORR may require more time. The ORR liaises regularly with the TS and Network Rail regarding the timescale for significant applications.

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December that year or the Subsidiary Change Date in May the following year. To ensure that the incoming franchisee has the necessary rights at the PBD either:

1. the incumbent franchisee can negotiate amendments to the TAA.
2. TS can negotiate a new TAA on behalf of the Successor Operator; or
3. the Incoming Franchisee can negotiate a new TAA on its own behalf.

Discussions on these approaches have already been held with ORR, NR and FSR.

Timeline:
If the incumbent franchisee seeks amendments to the existing TAA the minimum timescales are as follows:

- Up to PBD-90: Network Rail and incumbent franchisee prepare application for amendments to TAA, with TS's guidance[13].
- PBD-90: Network Rail led industry consultation (Network Rail posts application on its website where bidders for the franchise will be able to see it).
- PBD-47 Network Rail and incumbent franchisee submit TAA application to ORR
- PBD-47 to T-5: ORR considers TAA application.
- PBD-5: ORR grants approval.

If TS or the incoming franchisee seeks a new TAA the minimum timescales are as follows:

- Up to PBD–130: Network Rail and TS/incoming franchisee prepare application for new TAA.
- PBD-130: Network Rail led industry consultation (Network Rail posts application on its website where bidders for the franchise will be able to see it).
- PBD-90 Network Rail and incumbent franchisee submit new TAA to ORR.[14]
- PBD-90 to T-5: ORR considers the application.
- PBDT-5: ORR issues directions.

Issues:
The main issue with a combined TAA for a remapped franchise is the requirement, because of recalibration, to begin the process at least 7, and preferably 12, months before the franchise start date.

The TAA can be negotiated by either the outgoing franchisee or TS acting on behalf of the Successor Operator. The issues which might arise due to the outgoing franchisee negotiating the TAA on behalf of a potentially different incoming franchisee is no different from scenario 1.

To determine who will submit the bid for services the anticipated date of the Franchise Agreement must to be mapped against the relevant PBD. Where the PBD occurs before the Franchise Agreement has been signed, a bid will be made by:

1. the incumbent franchisee, working on instructions from TS ; or
2. by TS on behalf of the incoming franchisee if it has been necessary to negotiate a new TAA.

Where the PBD occurs after the Franchise Agreement has been signed the incoming franchisee will submit its own bid at the PBD even if the Franchise has not commenced

7.4.6. The Issue of a new Passengers' Charter

Background:
A Passengers' Charter has been submitted as part of the bid and agreed (as an ancillary document to the Franchise Agreement) at the time that the Franchise Agreement is signed. The drafting in the Franchise Agreement requires that the Passengers' Charter must be in substantially the same form as this ancillary document.

[13] A TOC should not feel "exposed" in extending a TAA beyond its franchise end date – TS has powers under both the Franchise Agreement and the Transport Act to transfer a TAA to a successor operator.
[14] The ORR requires at least 18 weeks to consider a TAA. If a major holiday falls within this time period, if the TAA presents novel or complex issues, or if a large number of TAAs are submitted at the simultaneously ORR may require more time. The ORR liaises regularly with the TS and Network Rail regarding the timescale for significant applications.

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This is a process to iron out any minor issues and to produce the final version of the Passengers' Charter, rather than to create a Charter from scratch.

The Passengers' Charter is unique to a franchise and needs to be reissued at the start of a new franchise, whether or not there is a change in shape of the franchise, because:

The Passengers' Charter details the franchisee's commitments to its customers, including the compensation arrangements which apply in the event of poor performance. The franchisee must therefore have a Passengers' Charter for the franchise.

Timeline:

- T-60: incoming franchisee submits text of draft Passengers' Charter (based on what is contained in Franchise Agreement) to TS.
- T-60 to T-45: incoming franchisee undertakes consultations with Passenger Focus, London TravelWatch and RPA where relevant and resolves any (minor) wording issues with TS .
- T-40: final Passengers' Charter signed off by TS.
- T-30 to T-10: printing and distribution of Passengers' Charter to stations and supply of reference copies to TS, Passenger Focus, London TravelWatch, and RPA where relevant.
- T: new Passengers' Charter comes into effect.

7.4.7. Changes to fares & fares baskets

Timeline:

- (varies): outgoing franchisee sets fares for next fares setting round.

Background and Issues

Each fare as defined in the Ticketing and Settlement Agreement (TSA) is associated with a "Flow". A Flow comprises one or more routes either between a pair of stations or within a defined geographical area and is assigned by the TSA to one or other of the Train Operating Companies (franchisees). The franchisee owner of a Flow is known as the Lead Operator. A franchisee can expect to be Lead Operator for at least a few thousand Flows and in some cases many hundreds of thousands of Flows.

The Lead Operator of a Flow is required by the TSA to maintain at least one permanent inter-available walk-up standard class fare at all times. The Lead Operator is entitled to offer other fares too.

In normal circumstances, permanent fares may only be changed in one of three Fares Setting Rounds in each year ending in January, May and September. Fare changes are effective at the end of a Fares Setting Round. Franchisees' rights to set new, and change existing, fares in a Fares Setting Round are specified in the TSA. The principle deadlines in a typical Fares Setting Round are:

Flow Changes / Ticket Type Changes	Effective Date – 15 Weeks
Bulk Fares Changes	Effective Date – 10 Weeks
Individual Changes	Effective Date – 8 Weeks

At the end of a Franchise, Flows and the Fares associated with those Flows are transferred to the new franchise. The new franchisee becomes the Lead Operator for these Flows. Special transfer arrangements are made by the RSP, pursuant to the TSA Lead Operator change procedure and under the general direction of TS, if the boundaries of the outgoing franchise and its replacement differ as is the case with the Caledonian Sleeper Franchise.

The new franchisee is entitled to change the Fares it has acquired, as Lead Operator, in the first available Fares Setting Round subject to meeting the deadlines shown above. For example, a new franchisee taking over a franchise in July might have time to make bulk fares changes to take effect in September but would not be able to change Flows or ticket types. If a new franchise commences in September the franchisee's Fares changes could not take effect until the following January.

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The TSA Lead Operator change process requires:

- the issue of a change request to the existing Lead Operator by any franchisee that receives income from the Flow concerned, other franchisees that receive income from the Flow, TS and, if relevant, the proposed Lead Operator – the change request cannot be issued by the existing Lead Operator; in practice a change request is normally issued by the incoming franchisee.
- agreement between the franchisees who have received the change request. If such agreement cannot be reached the proposal is referred for resolution under the ATOC Dispute Resolution Rules. In practice franchisees do not object and the incoming franchisee is confirmed as the new Lead Operator.

Creating a New Fares Basket

TS regulates fares in Scotland and DfT, both use long listings of fares called fares baskets. Fares baskets are loaded into a system called FIRM which checks fares compliance throughout the franchise period. Most operators have two fares baskets, one for their Commuter Fares, and the other for their Protected Fares. A new franchisee will simply inherit the outgoing franchisee's fares basket if no significant remapping is involved, but if remapping takes place such as in the case of the Caledonian Sleeper Franchise a new set of fares baskets may be required. The fares baskets constitute the 'Fares Documents' referred to in the Franchise Agreements.

Timeline:

- T-90: TS decides whether new fares baskets are required. If so, it will initiate the construction of baskets through its consultants [(currently AEA Technology Rail) and Atos Origin who manage the FIRM system] on TS's behalf. The process may involve asking the pricing manager of the outgoing franchisee(s) about their current fares.
- T-20: TS provides completed fares basket to incoming franchisee.

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