

## **BRB (Residuary) Limited**

**Summary of the responses to the consultation on the proposed abolition of BRB (Residuary) Ltd (Company No. 04146505) and transfer of its functions, property, rights and liabilities to London & Continental Railways Limited, a subsidiary of Network Rail Infrastructure Limited, the Secretary of State for Transport and the Rail Safety and Standards Board**

Department for Transport  
October 2012

## **BRB (Residuary) Limited**

BRB (Residuary) Ltd (BRBR) is a limited company which was created in 2001 to manage the majority of the remaining property, rights and liabilities of the British Railways Board (BRB). Those responsibilities include the management of a diverse property portfolio and the settlement of industrial injury claims submitted by former British Rail employees.

As a residuary company, it was always the Government's intention to wind-up BRBR at the appropriate time. That time is now at hand and the Public Bodies Act 2011 (the Act) provides the most efficient means by which to achieve this goal.

Since BRBR was established in 2001, the Company has pursued with vigour its remit of extracting value from the disparate portfolio of assets and liabilities inherited from the BRB. By the date of abolition, BRBR will have disposed of more than 90% of its inherited property assets, generating over £400m. However it is no longer viable, given the reduced scale of BRBR's activities, to maintain BRBR as a separate corporate entity. It is therefore proposed that BRBR be abolished and its functions, properties, rights and liabilities transferred to a combination of the Secretary of State for Transport (the Secretary of State), London & Continental Railways Limited (LCR), a subsidiary of Network Rail Infrastructure Limited (NRIL) and Rail Safety and Standards Board (RSSB).

The Act includes a requirement in Section 10 for consultation in respect of all proposals which require an Order to be made under Sections 1 to 5 of the Act. Impact Assessments were carried out and confirmed that the impact of the proposed reform is cost neutral. In view of this, the Department for Transport (DfT) undertook a targeted 6 week informal consultation. This met the consultation requirements for a body with specialised functions and a limited user group. DfT sent out details of the proposals to 280 stakeholders likely to have an interest or be impacted in some way (including the organisations named in the proposals). The consultation document was also made available on the DfT website.

A total of 29 responses were received from a range of organisations involved either directly with the railways or railway land, as well as interested individuals. The overall balance of opinion was supportive of the proposals. Where concerns or queries were raised, points were made in relation to specific aspects of the plans rather than the underlying approach and in many cases sought clarification or better understanding of the details. No single response provided detailed input on all 5 of the questions set out in the consultation document. Instead the pattern was to comment on aspects of the proposals relating to one or more of the 4 entities proposed to take on BRBR's roles and responsibilities, or on the implications of the proposed transfer of responsibilities, often in respect of a specific area, site or business interest. A list of those responding to the consultation is at Annex A.

This document deals with each of the five questions presented in the consultation document together with other topics raised which fall outside of these specific areas. It sets out a summary of the responses, the concerns and issues raised and the next steps which we propose to take.

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## CONSULTATION QUESTIONS

### ***We asked:***

Do you agree that BRB (Residuary) Ltd (BRBR) should be abolished and if not how otherwise could the Government objective of reducing the overheads costs of BRBR be achieved?

### ***Consultees responded:***

The majority of responses were supportive of the logic of the proposal and recognised that it has always been the intention to abolish BRBR at the right point. It was also acknowledged by some that it was no longer cost effective to continue with BRBR in its current form. There was only one respondent who objected to the proposal and offered an alternative approach, suggesting that BRBR should remain in existence and transfer to NR as a subsidiary organisation with devolution in Scotland and Wales as appropriate. There was also a request for a more detailed breakdown of the costs and savings associated with abolition. Several consultees referred to the good working relationship they have with BRBR and/or the legal agreements already in place and expressed concerns that these should be continued or upheld in the future to prevent either an increase in costs or a decrease in value of related business interests. One respondent praised BRBR's 'imaginative and sustainable' approach to finding uses for redundant buildings and structures. Support was qualified in two cases by statements of interest in several named BRBR properties seen as important for future regional transport policy. There were also requests for reassurance that nothing would be done to dispose of railway assets that could logically be needed at a future time (for a future cost effective and business justified scheme).

### ***We asked:***

Do you agree that London Continental Railways Ltd. (LCR) is the entity best placed to manage the assets and related activities proposed to be transferred to it (if BRBR is abolished) and if not who else should manage these assets and the associated activities set out in section 1.1?

### ***Consultees responded:***

There were five responses to the question of LCR's involvement and although some concerns were raised over specific sites most of the respondents were

supportive of the proposal. One raised concerns about LCR's ability to manage the additional infrastructure given their current geographical base. However they did not dispute the company's expertise and experience. Two responses agreed with LCR's involvement but listed some properties which they thought should instead pass to NR, suggesting that this would better reflect either their current use or their potential role in future rail development. From a regional perspective, there was a particular concern raised regarding the future of the Glasgow Eastfield Depot (linked to the ScotRail franchise) and a general request for consultation in the event of LCR selling off additional property or assets passed from BRBR.

### ***We asked:***

Do you agree that Network Rail Limited (NR) is the entity best placed to manage the assets and related activities proposed to be transferred to it (if BRBR is abolished) and if not who else should manage these assets and the associated activities set out in section 1.2?

### ***Consultees responded:***

There were 15 responses presenting views which were largely supportive of the proposed transfer of assets and related activities to Network Rail (NR). A number of the respondents saw the proposed involvement of NR as a sound and logical approach which one suggested would "help remove some constraints to rail development".

Responses received from academic and research organisations were supportive of the proposed transfer of the Old Dalby Test Track (ODTT) from BRBR to NR. In particular they supported the prospect of NR having a "wider test and trialling capability which will cost-effectively fulfil [their] academic research programme" and "facilitate the application of new technology to the UK rail industry". One response presented a slightly different view, looking to safeguard the ongoing use of the ODTT by London Underground Limited (LUL). The response recognised the desire to allow more access to the site and the potential opportunities that may arise from transferring it to NR, but wanted to ensure that there would be no impact on the current LUL testing programme. It was expected that suitable arrangements for this would be agreed, but suggested that should a transfer to NR not be possible then consideration should be given to transferring ownership to Transport for London.

There was a suggestion that consideration should be given to transferring management responsibility to NR for bridges owned by Railway Paths Ltd that are adjacent to the operational railway. Other respondents with particular interests in specific sites sought an opportunity for early engagement with NR over future plans for those sites, and sought reassurance that there would be

consultation over any future proposals by NR to dispose of sites

NRIL responded on behalf of NR and suggested that the assets and related activities proposed to be transferred to NR should be transferred to an NRIL subsidiary limited by guarantee, as it is not consistent with their corporate structure to have assets and / or statutory functions vested in NR. In addition, it was argued that NRIL was the holder of the network licence and is funded accordingly and all ownership of property is currently with NRIL.

NRIL provided a detailed response regarding this section of the proposals. Overall they agreed with the proposed transfer of assets and related activities where this is of benefit to the industry, but sought further details on some properties being transferred. They also requested clarification on practical aspects of the transfer process itself. Finally, they identified some additional properties that they felt should be added to the list of properties transferring, on the basis that these were also related to the operational rail network. Following further discussions, agreement has now been reached on the properties to be included in the transfer scheme (save in respect of three viaducts where discussions are ongoing), and clarification has been provided on the other points raised. Further details on this are provided later in this document, under the section on “responses to points raised”.

### ***We asked:***

Do you agree that the Secretary of State (SoS) is best placed to manage the assets and related activities proposed to be transferred to her (if BRBR is abolished) and if not who else should manage these assets and the associated activities set out in section 1.3?

### ***Consultees responded:***

The majority of the 15 respondents agreed that the SoS should manage the functions proposed, with only one respondent rejecting the proposal. However a range of views and concerns were expressed regarding the detail of how the assets would be managed, and in particular the involvement of the Highways Agency (HA), how the SoS would maintain and continue existing BRBR working relationships, and the future of specific properties or sites.

A number of respondents raised concerns over the proposed role of the HA in managing and maintaining the BRBR assets which are proposed to be transferred to the SoS. Four respondents sought further detail on the HA's intended approach, including how they would work with local authorities and Railway Paths Limited, arrangements for structures in Scotland and Wales and seeking assurances on how they would manage and report on heritage structures. There were also questions on the funding safeguards that would be put in place for assets managed on behalf of the SoS to ensure they are

properly maintained. Three responses opposed HA taking on their proposed management role, but did not propose an alternative. They argued that, as a road based organisation, HA would not have the necessary skills or focus for the work required. Concerns were also raised over whether using the HA would provide best value, particularly if they have to apply higher maintenance and inspection standards than used by rail authorities.

A number of respondents asked about the future of specific assets or areas of land. Sites included areas alongside operational track, disused trackbed earmarked for cycle paths, and sites of interest for future rail development, as well as strategic sites such as Temple Mills bus depot and Waterloo. Some of these sought reassurance that they would be consulted over any future plans for these sites. Two respondents sought reassurance that the existing good working relationships with BRBR would be maintained by the successor bodies in the future.

### ***We asked:***

Do you agree that the Railway Safety and Standards Board (RSSB) is the entity best placed to manage the assets and related activities proposed to be transferred to it (if BRBR is abolished) and if not who else should manage the assets set out in section 1.4?

### ***Consultees responded:***

Although there were a range of different perspectives on this question, the majority of the five responses received were supportive of the proposal to transfer the activities to RSSB. Two respondents gave clear support, with one concluding that the organisation has the appropriate experience to manage the intellectual property rights (IPR) and licences referred to in the consultation document. Another response agreed that ownership of IPR for drawings and maintenance manuals licensed to Railway Documentation and Drawing Services Ltd (RDDS) should pass to RSSB, but went on to set out concerns regarding certain Reports, which they argued were subject to existing Exploitation Licences (ELs) bought by private companies when BRB was privatised. If IPR for these reports passed to RSSB it would contravene the ELs and undermine the commercial position of the private companies involved. The response suggested that where ELs exist, the IPR in these reports should be assigned to the licence holder, with RSSB and RDDS continuing to be bound by the relevant confidentiality obligations. A concern was raised by one respondent who questioned whether IPR in the RDDS drawings should pass to a private company. Another respondent did not object to the proposal but highlighted the need for RSSB to obtain professional advice on the best way to conserve and curate the large number of drawings and maintenance documents.

***Other issues raised by consultees:***

Only 1 response raised an issue outside of the consultation. This related to the renewal of the Great Western TOC franchise and the involvement of First Group.

***Responses to points raised in Consultation:***

A number of concerns were raised in the consultation over the impact the proposals would have on decisions to dispose of land that may be needed for future rail use. The abolition of BRBR will not result in any change to the current process for releasing land designated for rail use for disposal or alternative non transport use.

A number of respondents sought assurances on the role of the HA in taking on management responsibility for part of the estate. HA is an executive agency of the DfT and so directly accountable to the Secretary of State for Transport. It has the necessary engineering and maintenance expertise to take on this responsibility and will ensure there is no diminution in the effectiveness with which BRBR functions are executed. As part of this, following the transfer HA will carry out a review of how the BRBR functions can best be delivered in the future. This will include ensuring effective links are maintained with other relevant organisations (e.g. local authorities, the Welsh and Scottish Governments and Railway Paths Limited).

A respondent questioned whether using the Highways Agency to maintain road bridges that form part of the Burdensome Estate would represent best value for money, as they must apply a higher maintenance standard to their bridges. This issue has been considered in more detail as part of the analysis of consultation responses. While the current position, where BRBR maintain these structures to a lower standard, should continue post abolition, further investigation has indicated that achieving this may have been affected by changes to the ownership of BRBR (from the British Railways Board, to the Strategic Rail Authority and then to the Secretary of State). As a result, it is likely that it will be necessary to regularise the position regarding the standard to which the structures are maintained, prior to the abolition taking place. If so, a targeted consultation will take place with affected parties before a final decision is taken.

Assurance was sought on specific properties and sites that would be transferring to new successor bodies, and the impact this might have on their future use (e.g. the Glasgow Eastfield Depot, bridges close to NR operational railway, Park Royal, Old Dalby Test Track, the Ashfordby Workshop, RTC Derby, Waterloo International Terminal, and the Temple Mills bus depot). These responses will be passed to the relevant successor bodies, who will be encouraged where appropriate to enter into early engagement with relevant



parties post abolition.

Other respondents used the opportunity presented by the proposed abolition to raise questions on sites where decisions have already been made to release them for non transport use, and where plans are now being progressed for alternative uses. It should be noted that responsibility for decisions on specific sites pre abolition will continue to sit with BRBR and be subject to the usual process for disposing of land for non transport use. Concerns over subsequent plans for the development of sites already sold for other uses should be directed towards the planning authorities, who are responsible for overseeing and approving these proposals.

A request was made for further details on the savings that will result from the abolition. Detailed work on this is still being carried out and will be provided within the proposals to be laid before Parliament as part of the abolition process. However, as a residual body it was always intended to wind up BRBR at an appropriate point in time and the Act provides the opportunity to do this in an efficient and cost effective manner. A by-product of the solution will be to remove the overheads associated with running BRBR as a separate entity, which should deliver some savings. It is the intention of that any functions of BRBR should pass to successor bodies to the extent that they are currently exercised by BRBR.

Railway Paths Limited (RPL) sought additional reassurance on the level of service that HA would provide, and gave proposals to help address their concerns. The current BRBR senior manager who sits on the RPL Board will be replaced by a representative of HA, so retaining the current close working relationship.

NRIL raised a number of issues concerning the proposals. Since submitting their response NRIL has worked closely with DfT to clarify issues associated with the transfer of structures and to ensure they have sufficient information to agree details for the transfer. As a result, the following has been agreed:

- NRIL identified additional sites it felt should pass to them under the transfer. In addition, it was suggested that some sites associated with NRIL maintained structures should also transfer. Following discussion, agreement in principle has been reached on the majority of properties to be included in the transfer scheme.
- Following discussion it has been agreed that the statutory functions and properties will transfer to a subsidiary company of NRIL. The subsidiary company is limited by guarantee, as is required by the Act.
- As part of the discussions, information has been provided to NRIL to enable them to carry out a level of due diligence that has reassured them about the liabilities associated with properties that they are taking on. This included access to associated legal documentation and annual inspection reports.

- It was confirmed that the transfer to NRIL would not include any transfer of employees or supplier contracts from BRBR.
- It was also confirmed that the existing management agreement for BRBR records held in NRIL's York storage facility would continue until after the transfer date, when management arrangements would be reviewed.
- Additional information has been provided on the Old Dalby Test Track, and NRIL has confirmed they are content to take on this responsibility.
- It was confirmed that tax matters in connection with the abolition are being discussed with HMRC.
- Discussions are ongoing with the Office of Rail Regulation (ORR) about the transfer of assets to NRIL. Before the assets can be transferred, NRIL may need to secure any such consents as may be required from ORR.
- It has been confirmed that for each property included in the transfer scheme there is no separate requirement to register with the Land Registry.

DeltaRail raised objections to the proposals to pass certain IPR to the RSSB, in respect of a number of reports held by a subsidiary company of RSSB – RDDS. They were concerned that this could undermine their commercial position, as they hold what they believe to be exclusive access rights to these reports under an EL granted at the time British Rail was privatised. These reports are held in a storage facility run by the RDDS. DeltaRail are concerned that transferring IPR from BRBR to RSSB would result in RSSB looking to allow wider access to these documents, compromising their commercial position.

It is understood that the question of what rights DeltaRail have in respect of these records under the EL, and how this impacts on RSSB's ability to use the information for its own purposes, is the subject of an ongoing legal action between DeltaRail and BRBR.

DeltaRail's concern on protecting their commercial position is not material to the decision on where IPR for these particular records sit, provided the successor body complies with the requirements of the EL, as clarified by the current legal action. The proposal to pass IPR to RSSB was intended to simplify current ownership and management responsibilities for the records licensed to RDDS, and to benefit the rail industry by allowing continued access to these records where appropriate. These benefits still apply. Given this, and the fact that ownership of the IPR does not in itself impact on the requirements of any EL, it has been decided to proceed with the transfer to RSSB, who will be required to comply with existing EL in the same way as BRBR do now

***Next steps:***

Having considered the responses to the consultation, the Government has decided to implement its proposal to abolish BRBR and transfer its functions, properties, rights and liabilities to LCR, NRIL, the Secretary of State for Transport and RSSB. It is anticipated that a draft Order and Explanatory Document will be laid before Parliament in due course.

In the meantime, the Department for Transport will encourage a continuation of the close dialogue and communication between BRBR and the successor bodies to ensure as smooth a handover as possible.

***Annex A – List of Responders:***

- Mr Lee Holland
- Lincolnshire County Council
- Wye Valley Railway
- National Archives
- Corris Railway Co. Ltd
- Innovation & Technology Centre, Dept of Mechanical Engineering, Sheffield University
- Mr Rhys Ab Elis
- May Gurney Regulated Services
- Merseytravel
- Eversholt Rail Group
- RailFuture
- DeltaRail
- NewRail, Newcastle University
- Manchester Metropolitan University
- Loughborough University
- Hitachi Rail Europe
- Cranfield Rail Group, Cranfield University
- The University of Nottingham
- Wenvoe Castle Estate
- Railway Paths Ltd
- Network Rail
- Conwy Borough Council
- Transport Scotland
- Railways Heritage Trust
- English Heritage
- Welsh Government (Minister for Local Government & Communities)
- Railway Vehicle Engineering Ltd.
- South West Transport Network
- Transport for London