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28 June 2024

**Network Rail Representations for the proposed 51st Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and ScotRail Trains Limited dated 3rd March 2016.**

As directed in your letter dated 30th May 2024, Network Rail is making its representations in respect of a Section 22A of the Railways Act 1993 for the 51st Supplemental Agreement (SA) of the Track Access Contract (TAC) dated 3rd March 2016 between Network Rail Infrastructure Limited (Network Rail) and ScotRail Trains Limited.

In line with ORR's letter of 24th April 2024 to the industry on 'Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes', ScotRail Trains Limited submitted this application to the ORR on the 20th May as a S22A.

Your letter made clear to industry that "We expect applications received by 20th May 2024 to be of sufficient quality, completeness, and certainty to enable Network Rail, industry and ORR to assess them. A prerequisite for achieving this is that applicants will have discussed their plans with, and sourced information from Network Rail before submission (in line with our guidance)."

It further "…requested that Network Rail produces a high-level plan by 5th June 2024 for ORR and industry. This will set out when it will produce its robust assessment for the applications submitted by 20th May 2024."

Network Rail fulfilled this request on the 5th June 2024 outlining the plan for undertaking capacity and

performance assessments to inform both Network Rail and the ORR on the applications received.

That response should be considered alongside this Representation.
In particular, it should be noted as indicated therein that:

- due to the unprecedented scale of 83 unsupported applications received at one point in time, Capacity Planning plan to phase its analysis,
- assessments will initially focus on applications and geography which do not overlap with the ongoing ECML ESG Development work to mitigate the risk of redundant analysis,
- all ECML ESG related applications will be considered following decisions as to the implementation of the ESG Timetable,

As we set out in the High-Level Plan; "Only those rights which potentially interact, contain the required level of information to inform assessments, were discussed with Network Rail and are intended for the next three timetable changes will be considered by Network Rail." and that "Applications consisting of rights for geography not impacted or for later timetable changes should be considered separately."

These factors have shaped the anticipated plan for submission of evidence related to this and other applications.

Whilst Network Rail was made aware by ScotRail Trains Limited that they would be applying for the proposed access rights as requested in ORR's letter, Network Rail has not yet had an opportunity to fully consider its position on this application and whether it can eventually support the proposed access rights.

ORR, in its invitation to Network Rail to make written representations, expects that Network Rail will:

- include all of the necessary information for ORR to take an informed decision; or
- to refer to all of the necessary analysis and the confirmed timelines Network Rail requires to reach its decision on the application. This should include the "5th June 2024 capacity analysis" and any other analysis Network Rail needs to complete;
- recognise which other applications within the published list of "20th May 2024 applications" could interact with each application.
- Confirm any interested persons name(s) or confirm there are no interested persons.

Network Rail can confirm that we will not be able to in this representation provide all the necessary information for ORR to make an informed decision at this point in time. However, in this representation we will address each of the points above as well as provide:

- provide an initial view of the application Form P and supplemental;
- where applicable, highlight if Network Rail believes that some of the access rights sought are outside the scope of the ORR's letter dated 24th April 2024;
- an indication of how Network Rail will be able to provide its final representations and any intermediate representations so that ORR will then have all relevant information from Network Rail to assist ORR in making an informed decision.

**Interested Person(s)**

Network Rail is not aware of any persons who would fall within the definition of "Interested Person" in paragraph 1 of Schedule 4 of the Railways Act 1993 in relation to the application made by ScotRail Trains Limited.

**Keeping you informed**

As stated in the letter to the ORR on the 5th June "The plan will need to be flexible and reviewed through the process to consider industry decisions in relation to the ECML ESG along with potentially other changing industry priorities and requirements. For example, recommendations from the East Coast Task Force may impact on industry resources, in particular timetabling resource. This could require changes to the

remaining stages of the plan, including impacting when analysis can be completed."

In the letter we also stated "We propose establishing a change control mechanism to track changes in the plan, when and where required, to retain transparency and clarity. This may also lead to consequential changes to anticipated dates of any resulting representations planned by our customer teams." Where such changes in timeline occur, we will notify you of any impacts on expected content, volume or timing of forthcoming information.

**Summary of Rights Sought**

In their application and as a high-level summary ScotRail Trains Limited are seeking the following access rights to commence from December 2025 PCD Timetable:
+1 Firm Right Edinburgh Waverley to North Berwick via Musselburgh Monday to Friday
+1 Firm Right North Berwick to Edinburgh Waverley via Musselburgh Monday to Friday
+5 Firm Rights Edinburgh Waverley to Tweedbank via Brunstane Monday to Saturday
+4 Firm Rights Tweedbank to Edinburgh Waverley via Brunstane Monday to Saturday

All the above Rights to have no individual end dates applied to them.

The Track Access Contract with ScotRail Trains Limited expires 31st March 2027.

No new rolling stock types are required to facilitate the services which will be enabled by these Rights.

Industry Consultation for this application commenced on 21st May 2024 and concluded 25th June 2024.

**The High-Level plan and Dependencies**

The High-Level Plan submitted on 5th June, and our additional engagement with Capacity Planning indicates that the following phases may be relevant for this application

- Phase 1 - Collation and Scoping
- Phase 2 - Risk Identification for application
- Phase 3 - Production Development Period for SCD 2025 aspirations
- Phase 4a – ECML confirmation for December 2025
- Phase 4b – ECML confirmation for May 2025
- Phase 5 – December 2025 Production Period

The above can also be found in Annex A.

This along with the Interacting Applications Matrix in Annex B should support Network Rail in considering applications and interacting location dependencies.

Of particular interest will be Operational, Infrastructure and Performance Risks and exploration of suitable mitigations including but not limited to the following areas:

- Operational Risk:
    - Level Crossings
    - Signal Passed at Danger (SPAD) Risk
- Operations:
    - Signaller Workload
    - Degraded Operation
- Infrastructure:
    - Maintenance Engineering Access including Incident Response
    - Asset Reliability (also links to Performance)
    - Power Draw

- Performance Intelligence (Route led view)

The approach to the above is laid out in the "Scotland Activities" to consider all Interacting applications and can be found in Annex C.

It is recognised that the Scotland Activities referred to above is dependent on other Route Plans, including but not limited to the "Eastern Region's Plan for all Affected Operator Applications" which can be found in Annex D.

As these Rights contained in this application are intended to be in situ until the end of the ScotRail Trains Limited Contract (31st March 2027), this should enable Network Rail to consider the dependencies already considered for the December 2024 timetable as well as May 2025 and December 2025 matters arising and provide final representations to you as outlined in the Scotland Regional Activities in Annex C.

We are mindful that the High-Level Plan and its analysis, or other issues indicated, may identify dependencies, risks or changes in risk profiles that could require revision or further review of individual responses. We also note the 5th June plan does not guarantee that analysis will not have to continue beyond the timetable development process. Where this is the case, we will communicate with the Operator and ORR.

As stated later in this letter, if interactions occur at different points in time, i.e., different Timetable Change Dates then this could have an impact on when Network Rail will be able to submit its position with regards to the application.

**Common route / regional identified considerations / constraints**

This request for rights covers a point in the network where it has been identified at a regional level that more than one application should be considered by ORR at the same time as any one decision would restrict the ability to accommodate other requests due to:

- Operational Risk:
  - Level Crossings
  - Signal Passed at Danger (SPAD) Risk
- Operations:
  - Signaller Workload
  - Degraded Operation
- Infrastructure:
  - Maintenance Engineering Access including Incident Response
  - Asset Reliability (also links to Performance)
  - Power Draw
- Performance Intelligence (Route led view)
  - To include Route led view on platform "docking" at Edinburgh Waverley.

The other affected operators' applications are shown in Annex B and our approach for providing information on these is as set out in the Scotland's Activities in Annex C.

**Network Rail Review of Form P and associated documents**

Network Rail has performed an initial assessment of the Form P and associated documents submitted with this application.

Network Rail would like to highlight the following:

Whilst we have in phase 1 of the 5th June Plan identified where applications could interact at the previously identified locations with another Operators application, we will through Phase 2 for December 2024 and

May 2025 applications identify those access rights sought which are not at an interacting location. If Network Rail does identify access rights (or part of the access rights) which are not at an interacting location, then Network Rail will consider the proposed rights as per business as usual and will engage with the operator and ORR on this.

**Network Rail's Initial Position on the Access Rights Sought prior to necessary assessments being completed in line with the plan**

Network Rail has made every attempt in their initial assessment of the Application received to be able to inform the ORR of any early positions it might have on the access rights sought. In this instance it will not be possible in this representation for us to give an initial view, but we have outlined later in the letter the necessary assessments that need to be undertaken to inform a view.

**Possible Interactions with Other Applications from 20th May 2024**

As requested in ORR's invitation for Network Rail to make written representations to this application, Annex B to this letter shows where this application could interact with each of the "20 May 2024 Applications" at the previously identified locations.

Please note if the interactions occur at different points in time, i.e. different Timetable Change Dates, then this will have an impact on the dates that Network Rail will be able to submit its position with regards to the application. I.e. if the application submitted for Operator A is to commence December 2024 and there are no concerns or conflicts that does not mean that when Operator B's aspirations are considered which start in May 2025 that both will be able to be accommodated and therefore Network Rail will have to see the outputs of the capacity assessments for the May 2025 Timetable for Operator B before they can give a final position on Operator A's application.

**ECML Access Rights**

As the ORR is aware the members of the Industry PMO agreed in March 2024 that the ECML ESG Timetable which was planned for December 2024, would be deferred pending further development work. Considering this, we are reviewing the requirement for continuation of our previous approach to access rights on the ECML. We expect to be able to communicate further with the industry and the ORR in the near future of our position on this.

In addition, any new or amended rights (which change capacity parameters) whether contingent or firm which are being sought in those 20th May Applications on the ECML, as stated previously and in line with the 5th June letter from Network Rail to the ORR, Network Rail will not be able to make decisions on this until decisions on ECML are made following consideration by the industry ECML Task Force. It is recognised for those operators who have bid for paths on the ECML for the December 2024 Timetable and they have been offered back to the Operator at D-26 Network Rail will have to consider the support of access rights in the interim only.

This application seeks new rights on the ECML in the case of the ESG being implemented in December 2025. Network Rail will only be in a position to assess this application post a decision on ECML ESG implementation and ECML Taskforce recommendations as to what Timetable the ECML ESG will be implemented.

**Allowing business continuity while preserving freedom of action for ORR in taking its decision**

Our letter of 5th June stated that in this interim period Network Rail will have to balance the need for business continuity, so that current services may continue to operate and timetable changes can be made when there is low risk of negative outcomes for passengers and freight users, with the need to avoid prejudicial decisions that could unduly favour one party where aspirations interact.

We note that some operators have split their applications across different timetable periods, which already provides ORR with the ability to deal specifically with the nearer-term applications now, whereas others have combined different timetable periods in a single application.

Should ORR wish to make a single decision on each application it has received, without breaking that application into parts, then, where a single application has been made relating to multiple timetable periods, there is a risk that rights might not be available in time for an operator to commence services as early as it would like, given the need for all of the information set out in our plans to be available in order for decisions to be made relating to those future timetables.

Where paths associated with some of the quantum rights in this application are included in a New Working Timetable issued under the Network Code Part D process, then Network Rail proposes to work with the applicant on these elements of the application. Our aim, subject to normal governance processes, would be to potentially agree a new s22 application for contingent, time-limited rights for that timetable period with no presumption of continuity – in line with the approach that ORR has supported for applications on the East Coast Main Line in recent years.

This would enable you to reserve your position on future capacity choices, allowing decisions that relate to a later timetable period to be made simultaneously, while making effective use of the railway network in the earlier timetable periods.

**Conclusion**

Network Rail is aware that this representation letter does not contain all the information needed for this application for the ORR to make a decision.

As explained in our letter of 5th June, these representations letters were mostly expected to reserve our position pending the outcome of the capacity and performance assessments. We are also mindful that the plan and its analysis may identify dependencies, risks or changes in risk profiles that could require revision or further review of this response. However, we hope that the plans we provided give you the reassurance that we will assess this application to inform Network Rail's position in a later representation in line with the plan and letter. In addition, Network Rail wants to give the ORR the confidence that we have made every effort in this letter to give any initial views where we can.

Network Rail asks that while we carry out our assessments, ORR progresses with its own assessments wherever possible to assist in making early decisions/ descoping the scale of applications requiring assessment from Network Rail. Additionally, where we have deemed an application for December 2024 or May 2025 to be unready in the initial representations in this letter, we ask that this be descoped from the analysis requirements as quickly as possible.

Network Rail will continue to keep ORR sighted on the progress of the plan for this application.

Yours sincerely

Suzanne Murray

Customer Manager.

**Annex A – High Level Plan for Information / Analysis / Assessment**

| **Details of Information / Analysis / Assessment** | **NOTES** |
|---|---|
| ***High Level Phases from 5th June Plan*** | |
| Phase 1 Collation & Scoping | Please see the June 5 Letter for details. |
| Phase 2 Risk Identification for May 2025 | Please see the June 5 Letter for details. |
| Phase 3 May 2025 Production Development Period | Please see the June 5 Letter for details. |
| Phase 4a - (ECML confirmed for December 2025) – focusing on December 2025 | Please see the June 5 Letter for details. |
| Phase 4b - (ECML confirmed for May 2025) – focussing on December 2025 | Please see the June 5 Letter for details. |
| Phase 5 – December 2025 Production Period | Please see the June 5 Letter for details. |
| ***Further Route / Function Analysis / Assessments / Information*** | |

| | | |
|---|---|---|
| Please see Annex C – Scotland's Activities" | | |
| Freight and Customer Commentary | | Commentary can be found in Annex D |
| Eastern Region Commentary | Informed by Regional/Route Plans | Further details and commentary can be found in Annex D |

## Annex B – Interacting Applications Matrix

| Operator/Application/Type | Dec-24 | May-25 | Dec-25 | A - WCML south | B - Birmingham | C - BHM-Derby | D - Derby-Sheffield | E - Sheffield | F - ECML&Leeds | G - Oxford | H - Gloucester | I - Cardiff |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Colas 10th SA 22a | x | x | x | | | x | x | x | x | | | x |
| DBC 72nd SA 22a | x | x | x | | | | x | x | x | | | |
| DBC 73rd SA 22a | x | x | x | | | | | x | x | | | |
| DBC 79th SA 22a | x | x | x | | | x | | | x | x | | x |
| DBC 81st SA 22a | x | x | x | | x | x | x | x | x | x | x | x |
| DBC 86th SA 22a | x | x | x | | | | | x | x | | | |
| DBC 87th SA 22a | x | x | x | | x | x | x | x | x | | x | x |
| DBC 88th SA 22a | x | x | x | | | | x | x | x | | | |
| DBC 70th SA 22 | x | x | x | | x | x | x | x | x | x | | |
| GBRf 34th SA 22a | x | x | x | x | x | x | x | | x | x | x | |
| GBRf 25th SA 22a | x | x | x | x | x | x | x | x | x | x | | |
| GBRf 28th SA 22 | x | x | x | x | | | | | x | | | |
| GBRF 41st SA 22A | x | x | x | | | | | | x | | | |
| Varamis 2nd SA 22a | x | x | x | x | x | | | | x | | | |
| CrossCountry UC, Hydra, Stansted 17 | x | x | x | | x | x | x | x | x | x | x | x |
| FLIM 25th SA 22A | x | x | x | x | x | x | | x | x | x | | |
| DRS 17th SA 22A | x | x | x | x | x | x | x | x | x | | x | x |
| EMR 21st SA 22A | x | x | x | | | | x | x | x | | | |
| FLHH 25th SA 22A | x | x | x | x | x | x | x | x | x | x | x | |
| FLHH 26th SA 22A | x | x | x | | | | x | x | x | | | |
| FLHH 27th SA 22A | x | x | x | | x | x | x | x | x | x | x | x |
| FLHH 28th SA 22A | x | x | x | x | x | x | x | x | x | | x | x |
| FLIM 24th SA 22A | x | x | x | x | x | x | | | x | | | |
| FLIM 26th SA 22A | x | x | x | x | | | x | x | x | x | | |
| Govia Thames Railway 62nd SA 22A | x | x | x | | | | | | x | | | |
| Grand Central 24th SA 22A | x | x | x | | | | | | x | | | |
| Hull Trains 28th SA 22A | x | x | x | | | | | | x | | | |
| Hull Trains 29th SA 22A | x | x | x | | | | | | x | | | |
| LNER 37th SA 22A | x | x | x | | | | | | x | | | |
| LNER 38th SA 22A | x | x | x | | | | | | x | | | |
| Lumo 11th SA 22A | x | x | x | | | | | | x | | | |
| Northern 57th SA 22 | x | x | x | | | | | x | x | | | |
| Scotrail 49th SA 22a | x | x | x | | | | | | x | | | |
| TPT 58th SA 22a | x | x | x | | | | | x | x | | | |
| Govia Thames Railway 63rd SA 22A | | x | x | | | | | | x | | | |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Grand Central 28th SA 22A | x | x | | | | | | x | | |
| Hull Trains 27th SA 22A | x | x | | | | | x | x | | |
| LNER 34th SA 22A | x | x | | | | | | x | | |
| LNER 36th SA 22A | x | x | | | | | | x | | |
| Lumo 12th SA 22A | x | x | | | | | | x | | |
| Northern 59th SA 22a | x | x | | | | | x | x | | |
| Northern 60th SA 22a | x | x | | | | | x | x | | |
| Scotrail 50th SA 22a | x | x | | | | | | x | | |
| TPT 62nd SA 22a | x | x | | | | | | x | | |
| TPT 63rd SA 22a | x | x | | | | | | x | | |
| Alliance Rail Cardiff - Edinburgh 17 | | x | | x | x | x | x | x | x | x |
| EMR 19th SA 22A | | x | | | | | | x | | |
| LIS 2nd SA 22a | | x | | | | | | x | | |
| Scotrail 51st SA 22a | | x | | | | | | x | | |
| TPT 64th SA 22a | | x | | | | | x | x | | |
| TPT 65th SA 22a | | x | | | | | | x | | |
| LNER 35th SA 22A May '28 | | | | | | | | x | | |

## Annex C – Scotland Route Activities to Assess Interacting Applications

## SCOTLAND ACTIVITIES

| Route Plan for Further Assessment of Interacting Applications: | Dependencies: | Notes: |
|---|---|---|
| **May '25:** | | |
| Advanced Notice of Timetable Change - all Operators | | |
| Train Plan Assessment (TP-RAM) - all applications | High Level Plan/Advanced Notice of Timetable Change (all Operators) | Activities in subject matter experts' diaries. |
| SO ATT High Level Plan Phase 2 | | |
| Power expert opinion - 22As | High Level Plan | This will include looking at previous modelling exercises to see if specific applications have been included. |
| Route led Performance Intelligence - 22As | High Level Plan | |
| Priority Date Notification and Bid - all Operators (D40) | | |
| Timetable Production Start | | |
| Access Rights Compliance Check (ScotRail only) | | Normal SoAR process will follow - not shown here. |
| Train Plan Evaluation (TP-REP) | Priority Date Notification and Bid - all Operators (D40) | Activities in subject matter experts' diaries. |
| Operational Risk Assessment - all applications | Priority Date Notification and Bid - all Operators | e.g. Level Crossing ALCRM, SPAD Risk |
| Operations Risk - all applications | Priority Date Notification and Bid - all Operators | e.g. Signaller Workload |
| Infrastructure Risk - all applications | Priority Date Notification and Bid - all Operators | e.g. Maintenance Access, Asset reliability |
| Route led Performance Intelligence - all applications | Priority Date Notification and Bid - all Operators (D40) | Including Platform Docking at Edinburgh Waverley. |
| Power Modelling | New Working Timetable - all Operators. | |
| Regular updates with Regulatory Reform, ORR and Route stakeholders | | |
| Timetable Go Live | | |
| **Dec '25:** | | |
| Train Plan Risk Identification (TP-HAZID) - all applications | Information from Operators and Capacity Planning (Timetable Production Work package spreadsheet) | Meeting will be held as per governing standard |
| Advanced Notice of Timetable Change - all Operators | | |
| Train Plan Assessment (TP-RAM) - all applications | High Level Plan/Advanced Notice of Timetable Change (all Operators) | Meeting will be held as per governing standard |
| SO ATT High Level Plan Phase 3 | | |
| Power expert opinion - 22As | High Level Plan | This will include looking at previous modelling exercises to see if specific applications have been included. |
| Route led Performance Intelligence - 22As | High Level Plan | |
| Priority Date Notification and Bid - all Operators (D40) | | Calendar of Milestone Dates not published. |
| Timetable Production Start | | Calendar of Milestone Dates not published. |
| Access Rights Compliance Check (ScotRail only) | | Normal SoAR process will follow - not shown here. |
| Train Plan Evaluation (TP-REP) | Priority Date Notification & Bid - all Operators (D40) | Meeting will be held as per governing standard |
| Operational Risk Assessment - all applications | Priority Date Notification & Bid - all Operators | e.g. Level Crossing ALCRM, SPAD Risk |
| Operations Risk - all applications | Priority Date Notification & Bid - all Operators | e.g. Signaller Workload |
| Infrastructure Risk - all applications | Priority Date Notification & Bid - all Operators | e.g. Maintenance Access, Asset reliability |
| Route led Performance Intelligence - all applications | Priority Date Notification & Bid - all Operators (D40) | Including Platform Docking at Edinburgh Waverley. |
| Power Modelling | New Working Timetable - all Operators. | |
| Regular updates with Regulatory Reform, ORR and Route stakeholders | | |
| Timetable Go Live | | |

## Annex D

## Eastern Route Commentary

Eastern Region has reviewed this application through its initial assurance sessions and is taking forward the relevant actions that will be tracked through the Regional High-Level Plan.

Eastern will be utilising all relevant intelligence gathered as part of the ECML ESG workstream to assist with its ongoing assessment and assurance activities.

Where an application has any additional rolling stock requirements, these will need to be fully assessed as part of the Eastern Region power modelling workstream and align with cross-route power modelling in other Network Rail regions.

As previously highlighted through this representations letter and the 5th June letter to the ORR, we may as we progress, identify dependencies, risks or changes that could result in a change to the plans or activities identified.

## Eastern Route Plan to Assess Interacting Applications

| Final list of applications Dec 2024 - 2025 timetable change | | | | | Where applicable to the application | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Application | Section | Details | Timetable change | Lead route | Train length, weight, routing and rolling stock confirmed in a | High level plan phases potentially relevant | Power modelling required | Level Crossing assessment required | Signaller workload assessment required | Platform/train interface risk assessment required | Compatibility / Route Clearance required | Vehicle Change required | Route opening / EAS (section 4) check requirec | Track maintenance impact | ETCS fitment required for ECDP | Vegetation clearance risk re bi-modes | Depot and stabling requirements |
| Scotrail 51st | 22A | PCD 25 timetable change rights | Dec-25 | Scotland | Yes | Phase 1 - 5 | Under review | Under review | Under review | Under review | Under review | Under review | Under review | Under review | Under review | Under review | Under review |

## Freight and Customer Team Commentary

Our regulated growth target for Railfreight in CP7 is 7.5%. In line with these freight growth targets, we are committed to securing capacity in the timetable for future use. Where capacity and suitable capability can be identified, we will consider applications for the Sale of Access Rights.

ENDS