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**Network Rail Representations for the proposed 32<sup>nd</sup> Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and Transport for Wales Rail Ltd dated 6 August 2020.**

As directed in your letter dated 30<sup>th</sup> May 2024, Network Rail is making its representations in respect of a Section 22A of the Railways Act 1993 for the 32<sup>nd</sup> Supplemental Agreement (SA) of the Track Access Contract (TAC) dated 6 August 2020 between Network Rail Infrastructure Limited (Network Rail) and Transport for Wales Rail Ltd.

In line with ORR's letter of April 24 2024 to the industry on 'Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes', Transport for Wales Rail Ltd Limited submitted this application to the ORR on the 20 May 2024 as a 22A.

Your letter made clear to industry that "We expect applications received by 20 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 05 June 2024 for ORR and industry. This will set out when it will produce its robust assessment for the applications submitted by 20 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 Transport for Wales Rail Ltd 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 “5 June 2024 capacity analysis” and any other analysis Network Rail needs to complete.
- recognise which other applications within the published list of “20 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 Transport for Wales Rail Ltd.

### **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.”

Please note although this application does not directly interact on the ECML, any decisions relating to the ECML could have consequential impacts on capacity and performance in relation to this application. This is particularly relevant for locations used by services which cross Network Rail Route boundaries.

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. Where there are capacity or performance aspects of this application that will not be addressed through the High-Level plan (due to lack of necessary information as indicated by ORR, or due to the focused areas of analysis being provided by the High Level Plan) we will discuss below how we propose to provide the necessary information that will be required by ORR to take a decision.

### **Summary of Rights Sought**

In their application and as a high-level summary Transport for Wales Rail Ltd are seeking the following access rights to commence from May 2025 Timetable with expectation of the continuity of rights post the Transport for Wales Track Access Contract expiry date on 1<sup>st</sup> August 2025.

The changes to access rights in this proposal are the combined changes to access rights in Service Group HL05 (Cardiff Valleys and Local Services) made through two earlier supplemental agreements:

- 19th supplemental agreement access rights, approved by ORR on 18 March 2024, with no expectation of the continuity of rights post the Transport for Wales Track Access Contract expiry date in August 2025 due to potentially interacting aspirations around Cardiff Central area from December 2025 TT change:
  - Cardiff Central to Barry Island - one additional access right on Weekdays.
  - Barry Island to Cardiff Central – one additional access right on Weekdays.
  - Cardiff Central to Barry – one additional access right on Saturday.
  - Cardiff Central to Penarth – five additional access rights on weekdays, three additional access rights on Saturdays – five additional access rights on Sundays.
  - Penarth to Cardiff Central - five additional access rights on weekdays, three additional access rights on Saturdays, five additional access rights on Sundays.
  - East Boundary to Cardiff Central – nine additional access rights on Fridays, eight additional access rights on Saturdays, seven additional access rights on Sundays.
  - Cardiff Central to East Boundary – ten additional access rights on Saturdays, nine additional access rights on Sunday.
  - West Boundary to Cardiff Central – five additional access rights on Weekdays, three additional access rights on Saturdays.
  - Cardiff Central to West Boundary – four additional access rights on Weekdays, three additional access rights on Saturdays.
  - Cardiff Central to Barry Island – five additional access rights on Sundays for the wintertime only.
  - Barry Island to Cardiff Central - six additional access rights on Sundays for the wintertime only.
  - Cardiff Central to Barry – five additional access rights on Sundays for the wintertime

- only.
  - Barry to Cardiff Central - six additional access rights on Sundays for the wintertime only.
- 24th supplemental agreement, a 'washup' to the 19th to amend several access rights to align with Freight Train Slots, which is due to be informally submitted to ORR and where TfW Rail expects ORR to apply the same caveat as for the 19th supplemental agreement.
  - Reduction of the quantum of rights for:
    - Cardiff Central to East Boundy by three on weekdays.
    - East Boundary to Penarth by one from Mondays to Thursdays and Saturday's peak.
    - Penarth to East Boundary by one from Mondays to Fridays and by two on Fridays and by one on Saturday's peak.
  - Uplift for the quantum of rights for:
    - Cardiff Central to East Boundy – one additional service on Saturday's peak.
    - East Boundary to Penarth – one additional service on Saturdays off peak.
    - Penarth to Cardiff Central – two additional services from Monday to Thursday and Fridays, two additional access rights on Saturdays.

Industry Consultation for this application commenced on 23/05/2024, concluded on 24/06/2024.

#### **The High-Level plan and Dependencies.**

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

The High-Level Plan submitted on June 5, 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 Plan as highlighted in Annex A will enable Wales Route to consider the following dependencies and provide final representations to you:

Level Crossings considerations:

- Planned Assessments
- Level Crossing assessment
- ALCRM modelling/assessment
- ALCRM modelling/assessment - May'25
- ALCRM modelling/assessment - Dec'25

Other considerations include:-

- Phase 1: Internal review of existing data
- Phase 2: Performance assessment of May'25 decisions
- Phase 3: Performance assessment of Dec'25 decisions
- Engineering Access Assessment
- Signaller Workload Assessment Dec'24

- Signaller Workload Assessment May'25
- Signaller Workload Assessment Dec'25

#### Wales and Western Performance Statement:

Wales and Western Region will consider any additional access right applications for the region in the context of current performance levels, our ongoing recovery plans, all other known and emerging future service aspirations, and our asset condition and maintenance requirements. Furthermore, we will consider the risks associated with planned enhancement projects, including Old Oak Common, East West Rail, South Wales Metro, MetroWest and others.

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 05 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.

This along with the interacting applications matrix in Annex B, should support Network Rail in considering application and interacting location dependencies.

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 Cardiff which 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 the items listed in Annex A. The other affected operators' applications are set out in Annex B.

#### Cardiff:

As ORR is aware Cardiff Central and surrounding area is one of the key interacting locations highlighted in ORR's letter of 24th April 2024. This application is one of several applications seeking additional rights in Cardiff Central and surrounding areas. It is our intention to develop a strategic plan for passenger services in the Cardiff Central area to optimise capacity in the short, medium, and long term. We will do this in consultation with all affected operators and stakeholders.

The plan for the Cardiff Area Capacity Study is to commence late summer and this will initially look to assess all live and aspirational proposals impacting on capacity through Cardiff Central; identify the gaps in analysis that has been done; then if it's deemed necessary, carry out some further analysis to bring it all together, assess different potential service scenarios. We have started to do some preliminary exploration now to consider what the scope and study remit is likely to look like and will have a workshop in late September to review and discuss. The draft provisional timescales are between 12-18 months to complete.

#### **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 have advised Transport for Wales about one outstanding access right for Cardiff to Newport Saturday's service, which was considered to be included in this application.

Transport for Wales have informed Network Rail, that they had a conversation with the ORR and the

expectation of continuity of this right post the Transport for Wales Track Access Contract expiring date will be assessed in the 28<sup>th</sup> SA application.

**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 in the plan the necessary assessments / analysis that need to be undertaken to inform a view.

Whilst we have in phase 1 of the 5 June 2024 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. Rights at interacting locations will be considered in line with the paragraph below headed “Allowing business continuity while preserving freedom of action for ORR in taking its decision.

**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.

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

Our letter of 5<sup>th</sup> 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 favor 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. However, in line with the Wales plan, Network Rail will keep the ORR abreast of developments and where further support can be offered, this will be communicated without delay.

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

Amanda Newton

Head of Passenger Experience

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

**Capacity Planning Plan:**

Details of Information / Analysis / Assessment	NOTES	
<b><i>High Level Phases from 5th June Plan</i></b>		
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.	
<b><i>Further Route / Function Analysis / Assessments / Information</i></b>		
Freight & Customer Assessment	Informed by Regional / Route plans.	Further details of assessment to be carried out found in Annex C
Cardiff Central Capacity study		



## Wales Route Plan:

<b>Capacity Assessment</b>
Collating & Scoping
Phase 2 Timetable Risk Identification May'25
Phase 3 May'25 Production Development Period
Phase 4a ECML confirmed Dec'25 Dec'25 assessment against May'25
Phase 4b Dec'25 assessment ECML confirmed May'25
Phase 5 december 2025 Production period
<b>Risk Identification</b>
Network Rail Interacting Access Rights - Risks Meeting
Dec'24 TCRAG Process
May'25 TCRAG Process
Dec'25 TCRAG Process
Internal consultation of applications
Internal consultations Dec'24 applications
Internal consultations May'25 applications
Internal consultations Dec'25 applications
<b>Planned Assessments</b>
Level Crossing assessment
ALCRM modelling/assessment
ALCRM modelling/assessment - May'25
ALCRM modelling/assessment - Dec'25
Performance Analysis
Phase 1: Internal review of existing data
Phase 2: Performance assessment of May'25 decisions
Phase 3: Performance assessment of Dec'25 decisions
Engineering Access Assessment
Signaller Workload Assessment Dec'24
Signaller Workload Assessment May'25
Signaller Workload Assessment Dec'25
Cardiff Central Capacity study workshop
Cardiff Central Capacity remit to be agreed and resources identified
Cardiff Central Capacity review
Cardiff Central Capacity study publication
<b>Governance</b>
Potential representations for Dec'24/May'25/Dec'25
Draft Letter
Internal Review
SOAR review and approval
Submit to ORR
Final representation:
Draft letter
Internal Review
Internal Consultation
SOAR review and approval
Submit to ORR

## **Annex B – Interacting Applications Matrix – Cardiff Central**

Operator/Application/Type				A - WCML south	B - Birmingham	C - BHM-Derby	D - Derby-Sheffield	E - Sheffield	F - ECML&Leeds	G - Oxford	H - Gloucester	I - Cardiff
	Dec-24	May-25	Dec-25									
Colas 10th SA 22a	X	X	X			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 87th SA 22a	X	X	X		X	X	X	X	X		X	X
DBC 92nd SA 22a	X	X	X									X
TfW 32nd SA 22a	X	X	X									X
CrossCountry UC, Hydra, Stansted 17	X	X	X		X	X	X	X	X	X	X	X
DRS 17th SA 22A	X	X	X	X	X	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
TfW 28th SA 22a	X	X	X								X	X
TfW 31st SA 22a		X	X								X	X
Alliance Rail Cardiff - Edinburgh 17			X		X	X	X	X	X		X	X

## **Annex C – Freight Considerations**

No concerns were raised other than the known ongoing ATT work looking at timetabling and performance. We would particularly like to highlight some of the aspirations in Freightliner Heavy Haul's 28th SA which interact at Barry Island.