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Type and Wear Passenger Transport  
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Dear Tom and Adam

## **Approval of the Connection Contract at Jarrow Oil Terminal between Tyne and Wear Passenger Transport Executive and Prax Terminals Limited**

1. We have today approved the terms of the above connection contract submitted to the Office of Rail and Road (ORR) formally on 29 June 2022 under section 18 of the Railways Act 1993 (the Act). This is to support the divestment and transfer of the Jarrow Branch Line from Network Rail to Tyne and Wear Passenger Transport Executive (Nexus), which will result in a transfer of responsibilities for the existing connection to the Prax Terminal network. Please find enclosed a copy of our directions notice, directing the parties to enter into the contract. This letter sets out the reasons for our decision.

### **Background**

2. On 12 September 2022 Nexus will take over ownership of the single-track Jarrow branch line, currently owned by Network Rail and used for rail freight traffic serving the Jarrow Oil Terminal. Nexus will then be able to further increase capacity by unifying the two separate infrastructures into a twin-track alignment that will enable more Metro trains to run, while still maintaining rail access to the Oil Terminal. As a result of the changes, Nexus will take over responsibility for the current connection point, requiring a new connection contract between the parties. Network Rail's current contract will be ended, and a tripartite agreement was set up to support the transition.

3. The contract currently in place for the sidings at the Jarrow Oil Terminal originates from a contract entered into between the British Railways Board and Shell-Mex and B.P. Ltd in 1972. Network Rail has since become successor to the British Railways Board and Prax has replaced Shell-Mex and B.P. pursuant to a novation agreement dated 29 February 2016.

### **Industry consultation**

4. Nexus ran an industry consultation from 10 May 2022 and 7 June 2022. There were no objections to the proposed connection contract. There were some changes to the contract after the consultation but were minor, not affecting any other parties.

### **ORR review**

5. The contract uses a combination of some of the existing provisions from the current contract, clauses from ORR's published Network Rail model connection contract, as well as other terms negotiated between the parties. Consequently, there are certain terms that ORR either sought clarification on or are different to ORR's model connection contract, of which are summarised as below:
  - The parties agreed that there are no set payments in respect of the contract, and they will generally bear their own costs. There are some specified exceptions, for example, Prax will pay any costs incurred by Nexus in complying with its Safety Obligations in respect of its siding and where Prax is in breach of its obligations (as set out in Clause 10.4.4.). This is unusual but not unprecedented and reflects the current arrangements.
  - There is no liability cap set between the parties, which is a continuation of the existing arrangements. ORR questioned whether they now wanted to insert a cap. Nexus stated that the approach is consistent with the principle that has been followed with the divestment of the Jarrow branch line project in that the existing parties are in a 'no better, no worse' position following divestment. It also reflects the nature of the network at this location. Nevertheless, we recommend that at the next review of the contract, the parties consider whether they want a cap.
  - There is an additional clause concerning the dual track works being delivered by Nexus following transfer of the line. Schedule 3 contains an indicative plan showing the network, sidings and connection point following completion of the Dual Track Works. This helps to set out the arrangements going forward.
  - There is a clause relating to the Freedom of Information Act (Clause 19), which sets out certain obligations for each party to the sharing of information and has been negotiated and agreed between the parties. Nexus stated that the clause is a standard term for it and provides additional structure to the obligations to which it is

subject as a public body. There is a similar term in CVL contracts. The parties must comply with the FOIA in any event, but we see no reason to object to this term in this instance.

- A Side Letter that addresses specified consequences of the blockade on the line when the dual track works are being carried out. It includes terms on which Prax can submit a claim for damages and/or incurred costs as a result of a Delay Event and a Mitigation Plan that sets out actions that Prax will take to mitigate the impact of a Delay Event. This reflects a specific set of actions at the site and is not an ongoing clause within the main contract.

Both parties understand the implications of these arrangements. We generally recommend that new connection contracts follow the model connection contract where appropriate. But this is not mandatory. In this instance the parties have incorporated model terms or revised/retained existing ones. We have explored these differentiations and, the parties are happy with them, and we see no reason to object to these bespoke terms in this instance.

#### **Our duties under section 4 of the Act and our decision**

6. This application is under section 18 of the Act and therefore is agreed between the parties, who are prepared to enter into the agreement.
7. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:
  - (i) to protect the interests of users of railway assets;
  - (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;
  - (iii) to promote efficiency and economy on the part of the persons providing railway services; and
  - (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.
8. Under clause 18.2.3 of the connection contract, Nexus is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and Prax. We look forward to receiving the conformed copy.
9. In entering any provision on the register, we are required to have regard to the need to exclude, as far as is practicable, the matters specified in section 71(2)(a) and (b) of the Act. These sections refer to:

- a. any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that individual; and
- b. any matter which relates to the affairs of a particular body of persons, whether corporate or incorporate, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that body.

10. Therefore, when submitting the copy of the signed agreement would you please identify any matters that you would like us to consider redacting before publication. You will need to give reasons for each request explaining why you consider that publication would seriously and prejudicially affect your interests.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Holt', with a long horizontal line extending to the right.

**Ryan Holt**