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28 June 2024

Dear Emyl,

**Network Rail Representations for the proposed 34<sup>th</sup> Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and London North Eastern Railway Limited dated 03 March 2017.**

As directed in your letter dated 30 May 2024, Network Rail is making its representations in respect of a Section 22A of the Railways Act 1993 for the 34<sup>th</sup> Supplemental Agreement (SA) of the Track Access Contract (TAC) dated 03 March 2017 between Network Rail Infrastructure Limited (Network Rail) and London North Eastern Railway Limited (LNER).

In line with ORR's letter of 24 April 2024 to the industry on 'Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes', London North Eastern Railway Limited submitted this application to the ORR on the 20 May 2024 as a Section 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 05 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 London North Eastern Railway 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 “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 SA;
- where applicable, highlight if Network Rail believes that some of the access rights sought are outside the scope of the ORR’s letter dated 24 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 London North Eastern Railway Limited.

### **Keeping you informed**

As stated in the letter to the ORR on the 05 June 2024 “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 London North Eastern Railway Ltd are seeking the following access rights to commence from the May 2025 Timetable:

- a tidy up of their Schedule 5 Part C rights tables to:
  - reflect what was the finalised ECML ESG timetable within their Schedule 5 Part C.
- A Track Access Contract expiry date extension from Principal Change Date 2025 to Principal Change Date 2030.

Industry Consultation for this application commenced on 21 May 2024, and concluded on 21 June 2024 with some operators being given extensions to 28 June 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 phases may be relevant outputs for this application:

- Phase 1: Collation and scoping
- Phase 2: Risk identification May 2025
- Phase 3: May 2025 Production development period
- Phase 4a: (ECML confirmed for December 2025) Phase 4b: (ECML confirmed for May 2025)
- Phase 5: December 2025 Production period

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

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 5 June 2024 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 how 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 limited capacity remaining after the planned delivery of additional firm rights previously directed on the ECML. The other affected operators’ applications are listed in the matrix as set out in Annex B.

### **Network 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:

- Network Rail notes that the application is identified as a Section 22A though an unsupported TAC extension can only be undertaken via Section 17 of the Railways Act.
- Network Rail notes that the core intention of this application is to extend LNER's TAC by five years.
- Within the SA: Network Rail notes that the intention of this application is to tidy up the future intended rights for the ECML ESG once implemented (Schedule 5 Part C). The Appendix showing a Schedule 5 Part C mark-up appears to show quantum increases which Network Rail will discuss with LNER given that the Form P states that the Part C revisions are to reflect the ESG quantum i.e. within the 2016 directed rights. Network Rail wishes to work with LNER to adjust the potential amendments to reflect the emerging ESG position.
- Within the Form P:
  - o Network Rail notes that the application proposes changes to take effect from May 2025, in line with the ECML ESG if it is delivered on that date, but following communication with LNER we understand that they also wish to discuss how to reflect what was bid and included in the New Working Timetable for December 2024 within their Schedule 5 Part B.
  - o Network Rail welcomes that the retention of the additional 0.5TPH London <> Leeds has been excluded from this application and will be managed through a separate application from May 2028.
  - o Network Rail notes that the ECML ESG performance modelling was included in the submission, as well as its Priority Date Notification Statement for December 2024, to support its 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. Whilst, as outlined in this letter, Network Rail has a number of assessments and analysis that needs to be undertaken to inform a position whether Network Rail supports or not the Application that has been submitted by LNER (detailed later in the letter), we do have an initial view on some of the access rights sought by LNER and will work with the applicant towards agreeing one or more Section 22 applications for those elements (straightforward contract extension, and changes to Schedule 5 to reflect the December 2024 New Working Timetable) in accordance with the principles in ORR's 24 April letter and Network Rail's approach to business continuity set out below.

### **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 20 May Applications on the ECML, as stated previously and in line with the 5 June 2024 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 no new rights and is instead a tidy up and so will enable the contract to reflect the timetable offered and intended scope of the ECML ESG (in the case of the ECML ESG being implemented in May 2025 or December 2025). Network Rail does not believe this application impacts on the ECML Taskforce recommendations as to what date the ECML ESG will be implemented.

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

Our letter of 5 June 2024 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. Network Rail will continue to update ORR on the status of our work in relation to this application in our periodic meetings.

As explained in our letter of 05 June 2024, 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,

Mark Garner  
Customer Manager, Eastern

Network Rail

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

Details of Information / Analysis / Assessment	NOTES
<b><i>High Level Phases from 5th June Plan</i></b>	
Phase 1 Collation & Scoping	Please refer to our letter of June 5th
Phase 2 Risk Identification for May 2025	Please refer to our letter of June 5th
Phase 3 May 2025 Production Development Period	Please refer to our letter of June 5th
Phase 4a - (ECML confirmed for December 2025) – focusing on December 2025	Please refer to our letter of June 5th
Phase 4b - (ECML confirmed for May 2025) – focusing on December 2025	Please refer to our letter of June 5th
Phase 5 – December 2025 Production Period	Please refer to our letter of June 5th
<b><i>Further Route / Function Analysis / Assessments / Information</i></b>	





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 – Eastern region high-level plan extract

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 required	Track maintenance impact	ETCS fitment required for ECDP	Vegetation clearance risk re bi-modes	Depot and stabling requirements
LNER 34th	22A	Contract extension plus update Part B and Part C	May-25	Eastern	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

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 05 June 2024 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.

## Annex D – Scotland Activities

### SCOTLAND ACTIVITIES

Route Plan for Further Assessment of Interacting Applications:	Dependencies:	Notes:
<b>May '25:</b>		
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		
<b>Dec '25:</b>		
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		