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Dear Ian and James

Track access contract between Network Rail Infrastructure Limited and West Coast Railway Company Limited

1. On 19 May 2020 the Office of Rail and Road (ORR) directed Network Rail Infrastructure Limited (Network Rail) and West Coast Railway Company Limited (WCRC), (jointly the parties), under section 18 of the Railways Act 1993, to enter into a Track Access Contract, enclosed with the directions, by no later than 29 May 2020. This letter explains our decision.

Background

2. The contract will provide WCRC with firm rights to operate a steam charter service from Fort William to Mallaig and return. It will be effective from 1 June 2020 and expire on 31 October 2024. From 1 April to 31 October each year the contract allows for 1 service in each direction per day, and within that, 2 services per day between 1 May and 30 September. For parts of the year when services are not running, the services are removed from the working timetable and that capacity is available for the use of other operators.

3. The contract follows previous contracts between the parties under which the services have been running for many years.

4. Unusually, the contract (as the previous contracts) includes departure time ranges. It also requires WCRC to install, and be operating exclusively, Controlled Emission Toilets (CETs) by 31 March 2023.

Industry consultation

5. A pre-application consultation was carried out by Network Rail between 9 October 2019 and 11 November. The consultation was carried out as being under section 22 of the Act, as a supplemental agreement to extend the expiry date of the previous contract. However, as the previous contract had already expired on 31 October 2019, it was not possible to extend it. We have accepted that consultation for this section 18 application, as the effect of both agreements is the same – continuation of WCRC's access rights to 31 October 2024.

6. Transport Focus, GBRf, and ScotRail responded to the consultation. GBRf was concerned that holding rights across the year was an inefficient use of capacity where the Jacobite only intended to operate between April and October. Network Rail confirmed that the rights were limited in each year to the period of operation only. Outside of those periods the services were not included in the working timetable and that capacity would be available to other operators.

7. ScotRail noted that WCRC was not obliged to fit CETs until 2023. It queried what steps were being taken to ensure that no discharge of effluent occurred in any station. WCR confirmed that it had entered into a voluntary code of practice with Network Rail. This includes additional public address announcements and signage regarding not flushing toilets whilst the train is stationary in platforms. Transport Focus agreed that it was essential that the fitment of retention tanks is completed as soon as possible.

ORR review

8. The contract requested covers the operation of services which have been running for many years and we have no concerns over the capacity required or the performance implications.

9. We note that the contract includes departure time ranges. We asked Network to explain why it was willing to offer this level of specificity, contrary to its usual policy. Network Rail explained that WCRC offers a primarily tourist type service and the times are essential to make the service a success. For example it allows a connection with the sleeper in the morning and the service pattern allows enough time for people to eat in Mallaig which is essential to the economy in the area.

Conclusions and Direction

10. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage



of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

11. Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and the Train Operator. Please send the conformed copy to me at ORR.

12. Electronic copies of this letter, the direction notice and the agreement will be sent to Keith Merritt at Department for Transport and to Peter Craig at Network Rail. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. Trippier', written over a light blue horizontal line.

John Trippier