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14 May 2007

Dear Sam,

### **Consultation on Criteria and Procedures – Track Access Contracts**

I set out the response from TfL (LUL?) on your consultation regarding potential changes to the criteria and procedures used for approving track access contracts.

I will deal with the topics as raised in the summary of questions contained in the consultation.

#### **Proportionate scrutiny of applications**

Whilst TfL welcomes the proposals to adopt a more proportionate response to applications and to allow greater flexibility - with the industry taking greater responsibility on the more straightforward applications - the safeguards currently in place must not be lost. Therefore, if Network Rail was to adopt additional responsibilities in this area it must be accompanied by a rigorous and comprehensive approach to preliminary consultation. Whilst Section 18 and 22 applications may well be less controversial, affected parties must still be granted the right of review, possibly by a streamlined process; but we would still expect advice to be disseminated to all those concerned. One way of allowing visibility of the process is to make available a log of all applications on Network Rail's website. However this duplicates the arrangements already in place with data held on the ORR website. Furthermore, if NwR were to take a greater lead in this area it may be necessary for ORR to divert its resources to monitoring the NwR approach. Therefore TfL's conclusion is that there may be little to be gained by transferring responsibility to NwR and it would be better to concentrate on streamlining the process within ORR itself. This will maintain the element of independence and would allow ORR's resources

to be proportionately allocated between straightforward applications and those which require a greater degree of regulatory scrutiny.

As TfL noted in the recent ORR seminar, if ORR was to attempt to focus on those applications of greater significance there would need to be greater clarity on the criteria and issues considered when making a judgement on whether to review an application in detail. The proposals for scrutiny as set out in section 2.11 of the consultation seem sensible but they do not cover how ORR would assess complexity or how the exact nature of the rights would justify scrutiny. One possible criterion would be to focus on the reservation charge proposal if this was to be based on an assessment of congested infrastructure rather than a blanket charge. In this eventuality any application concerning rights on a section of route which attracts a reservation charge would automatically attract greater scrutiny, irrespective of the type of application.

### **Minor service changes/General Approvals**

TfL has no objection to the proposals for section 18 and 22 applications as set out in paragraph 2.17 of the consultation, i.e.

- Extension of timescale for amendment to passenger contracts to one timetable period (six months).
- Automatic approval of changes which have already gone through established industry approvals (e.g. Network Code – Part F)
- Automatic approval of short term, minor amendments to Schedule 7 (e.g. signal box opening hours) or inclusion of additional routes in Schedule 2 for one timetable period (six months).

TfL has no objection to the revocation of the Short Term Track Access (Freight) General Approvals.

Whilst there is obviously scope for wider use of general approvals TfL would advocate that these are considered on a case by case basis. Where there is uncertainty it may be better to introduce changes on a contingent basis with their formal adoption after a test period – this, of course, aligns with the proposals for changes to Schedule 5 as set out in the consultation.

### **Alignment of Process**

TfL agrees with the proposal to attempt to better align processes but would observe that whilst this is readily achievable with the timetable development process alignment with the RUS process would be more difficult to achieve, particularly where rights are sought across a number of routes.

### **Consultation Arrangements**

TfL's comments on consultation and the placing of greater onus on the industry (i.e. NwR) have already been dealt with under the heading on

proportionate response to consultations. Whilst TfL agrees that NwR and train operators should work together to resolve issues at an early stage there still needs to be assurance of independent regulatory scrutiny. As a result there may well be duplication of process with little added value and any changes in this area should be reviewed with this in mind.

### **Application Deadlines**

TfL fully supports the proposal to set deadlines for applications.

### **Restructuring of Criteria and Procedures**

TfL has no objection to the proposal to merge the existing criteria and procedures and model clauses for access charges on the grounds that this will make these easier to understand and act as a 'one stop shop' which has to be in the interest of streamlining processes.

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This completes TfL's comments on the consultation.

Yours sincerely

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