

Consultation on Crossrail Access Option

Response from Aggregate Industries

September 2007

1. This is the response from Aggregate Industries (AI) to the ORR's consultation on the proposed Track Access Option for the Crossrail project.
2. AI is pleased to respond to this important consultation, but has some very serious concerns over the proposed option and underlying analysis. AI wishes to continue and grow its railfreight business and is concerned the effect of Crossrail will constrain this business.
3. In particular there is not yet any credible and agreed timetabling output on which we and others can base our comments on the effects of Crossrail on freight traffic.
4. Our detailed comments are set out in this response.

Summary of AI Position

5. AI supports the position of the Rail Freight Group (RFG) and FOC's in pressing to ensure that both present and future freight traffic, as defined in the Freight RUS and elsewhere, is properly included in the timetabling analysis associated with the scheme.
6. Given this, AI does not believe that all its concerns have been satisfactorily addressed at this stage. We therefore believe it would be premature to award an access option now, and that this could lead to freight traffic being severely affected once work commences on the project.
7. At present, the timetabling analysis undertaken does not take proper account of freight traffic levels expected at 2016, the expected commencement date. We therefore urge ORR to withhold any decision on the access option until, as a minimum, the timetabling work is satisfactorily concluded in order to identify the real incremental impact of Crossrail services on likely future rail freight activities. In addition, the key concerns summarised below must be addressed before any option is granted.
8. Our key concerns are;
 - a. The timetabling analysis for freight is inadequate, as described above
 - b. The appropriate mitigating measures for freight traffic have not been properly assessed

- c. There is no contractual certainty that the infrastructure work necessary to deliver the Crossrail capability will be delivered
- d. Elements of ORR's generic proposals on access options add significant risk and uncertainty for freight operators and customers and are inconsistent with the Secretary of State's statement to the house of July 2005, which recognises the importance of a stable framework for private investment and development. As these are still under separate consultation the option should not be awarded until this is concluded.

Timetable Analysis

- 9. The timetable analysis undertaken to date by the Crossrail team has shown that the freight traffic at 2005 levels can broadly be accommodated alongside the Crossrail traffic (this work we understand is incomplete and important still issues relating to terminal access remain outstanding). We do not consider this to be adequate analysis because;
 - a. Traffic levels are already higher than 2005 levels
 - b. The Freight RUS, and the DfT's White Paper, sets out quite clearly the expected levels of freight growth on the route between now and 2015. Aggregate traffic is a significant element of this growth.
 - c. We understand that certain port expansion projects (with full planning permission) have not been included and will consume network capacity in advance of Crossrail.
 - d. There is not yet a consensus on the status of the related rail projects in the London area which impact directly on the operation of the London rail network before and after Crossrail.
- 10. The Crossrail project state that, as the forecast freight growth could not be accommodated in full even if the Crossrail project did not proceed, they do not need to consider freight growth. I contend that no less than organic growth from current business be included and that the Crossrail project must accommodate this, putting in place appropriate mitigation.
- 11. *We therefore consider that the Access Option should not be awarded until the timetable analysis, including freight growth as defined in the Freight RUS and elsewhere, is properly concluded and consulted on, and appropriate mitigation identified.*

ORR Criteria

- 12. ORR's draft criteria, as set out in their January consultation states (para 2.17) 'TAO's should only be approved where sufficient capacity is expected to be made available on the network to accommodate the access rights at the time that they are required to be exercised by, or on behalf of, the applicant'. As the timetabling work has made no assessment of

expected freight traffic at such a time, we consider that this criteria cannot be demonstrated to have been met.

13. Para 2.18 states; 'We would expect the relevant infrastructure manager to satisfy itself that such capacity either already exists or will be made available as a result of the enhancements funded by an applicant'. As above, absent proper analysis of freight requirements, we do not believe this criteria can be satisfied at this time.
14. Para 2.21 states; 'We therefore propose that a TAO application should specify what benefits passenger and / or freight customers are likely to gain and the extent to which capacity and service volume growth is expected to lead to passenger and/or freight volume growth'. The application is silent on the expected benefits (or otherwise) to freight traffic and is therefore incomplete.
15. Para 1.14 (and elsewhere) states; 'Where there is an established RUS for the relevant route over which the TAO will have an impact, then we will take this strategy into account when making our decision'. The established Freight RUS clearly states the expected levels of freight growth on routes where the TAO will have an impact. We therefore expect that ORR will require the applicants to include the Freight RUS outcomes in their capacity analysis, and that ORR will determine that it is not be in a position to 'take account' of the RUS until that is complete.
16. *It is therefore clear that the application, as submitted, does not provide sufficient evidence for ORR to demonstrate that it can satisfy its own criteria. The Access Option should not be awarded until sufficient information is available and consulted on.*

Commitment to Undertake Enhancement

17. An Access Option does not, in itself commit the applicant to delivering the proposed enhancements necessary to deliver the capacity. It is unclear what would happen if, once the option had been awarded, certain enhancement schemes necessary for delivering capacity were removed from the project.
18. As a principle, we consider that in such cases, the option holders rights should be modified such that third party rights modelled when the option was awarded are unaffected by the change in scope.
19. The draft contract however seems to suggest that, should an 'Assumed Scheme' fail to be completed, the only action is a rerun of the timetable model. Other sections of the contract permit third party rights (including roll forward of existing rights) to be refused if they conflict with Crossrail rights. We infer this to mean that, if the Crossrail scheme decides not to undertake some elements of necessary enhancement, third party rights

could be adversely affected whereas Crossrail rights are unaltered.

20. We consider this to be dangerous and contrary to the long established principles of granting access rights in UK and EU legislation. It is inequitable that failure to deliver a necessary enhancement should disadvantage a dependent party rather than the sponsor of the enhancement.

21. *Prior to the Access Option being awarded, a contractual commitment should be made for those infrastructure enhancements necessary to deliver the capacity on which the Option is justified.*

Summary

22. In summary, we do not believe that ORR can be in a position now to award this access option. The timetable work to date is inadequate and cannot give ORR the assurances it's own criteria require. Its own criteria are not themselves concluded. Elements of the application are absent and so the consultation cannot be considered complete.

23. We therefore consider that ORR must ensure that all work is complete, and its own processes fully undertaken prior to decision. AI will consider its legal position if we consider our reasonable concerns have not been acted upon.