

**APPLICATION TO THE OFFICE OF RAIL REGULATION FOR  
A DEPOT ACCESS CONTRACT  
UNDER SECTION 17 OF THE RAILWAYS ACT 1993**

**1. Introduction**

This form should be used to apply to the Office of Rail Regulation (ORR) for directions under section 17 of the Railways Act 1993 (the Act) for a new depot access contract. Section 17 is the means by which those seeking the right to use a railway facility apply for compulsory third party access if they have failed (for whatever reason) to reach agreement with the facility owner.

The form sets out the ORR's standard information requirements for considering such applications.

It is very important that the application is made in good time and prospective applicants are strongly advised to read (and if necessary take advice on) the procedures which are laid out in the Act, (Section 17 and Schedule 4).

The Stations and Depots Team at the ORR will be happy to discuss prospective applications. Applicants are strongly encouraged to contact the Office at an early stage, preferably before making an application, to discuss their likely requirements. Contact details are shown at the foot of this form.

A copy of ORR's template depot access contract, can be accessed electronically and downloaded via the ORR website ([www.rail-reg.gov.uk](http://www.rail-reg.gov.uk)).

**2. The application**

**2.1 Title of proposed contract:**

A Depot Access Agreement between NEW SOUTHERN RAILWAY LIMITED (Depot Facility Owner) and FIRST CAPITAL CONNECT LIMITED (Beneficiary) to Selhurst Depot.

**2.2 Contact details** (*Company and named individual for queries*):

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#### Beneficiary

Company: First Capital Connect

Contact individual: Anne-Marie Lewis

Job title: Commercial Manager - Engineering

Address: First Capital Connect, Hertford House, 1 Cranwood Street, London EC1V 9QS

Telephone number: 07860 936639

Fax number: 020 7427 2813

E-mail address: [anne-marie.lewis@firstgroup.com](mailto:anne-marie.lewis@firstgroup.com)

#### Facility Owner

Company: New Southern Railway Ltd

Contact individual: Eve Boyle

Job title: Contracts Manager - Engineering

Address: Southern Rail 26 Go Ahead House London CR9 5GA

Telephone number: 020 89298903

Fax number:

E-mail address: [eve.boyle@southernrailway.com](mailto:eve.boyle@southernrailway.com)

**2.3 Licence and railway safety case** Please state whether the applicant intends to use the depot himself or whether someone else will use the depot on his behalf

Please state whether the proposed user of the depot (a) holds a valid train operating licence under section 8 of the Railways Act 1993 or an exemption under section 7, and (b) has an accepted railway safety case under the Railways (Safety Case) Regulations 2000. If the answer to (a) or (b) is no, please state the point which that person has reached in his obtaining of the licence, exemption or railway safety case (as the case may be)

(a) FCC holds a valid train operating licence under Section 8 of the Railways Act 1993. This was issued on 29 March 2006.

(b) FCC, as a Transport Undertaking and as Infrastructure Manager has an accepted safety certificate and authorisation as required under the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

### **3. The proposed contract**

**3.1 Executive summary** Please provide an executive summary of the proposed contract. This should cover the depot services, the commercial terms, and the applicant's reasons for seeking the contract in the terms proposed. The summary in this section should also explain (here or by cross-reference to the answers in the sections below):

- where there is an existing agreement in respect of the services in question, any differences between the existing agreement and the proposed contract; and
- any aspects in which the proposed contract contains bespoke provisions departing from the published template depot access contract.

#### Proposed Contract

FCC are making this application to direct New Southern Railway Ltd to enter into a new Depot Access Contract

with FCC. The proposed contract will ensure that the Depot Access Agreement schedules are in line with FCC's stabling needs at Selhurst Depot to enable the delivery of the Thameslink Programme Key Output 1 (KO1) timetable from May 19<sup>th</sup> 2012. It proposes continued assured access to stabling during the blockages of the core which have always been made available to FCC. FCC has no timetabled requirement for access to Selhurst on a weekly basis from that date apart from the few occasions where the core central London tunnels (the core) are blocked. However access to stabling at Selhurst is essential when there is a core block to ensure we meet our Service Level Agreement (SLC) to the DfT by ensuring that sufficient units are in the correct place to deliver a full service once the Network Rail core block had been lifted.

### **Background**

The Thameslink Programme represents a £6 billion government investment in the cross London Thameslink route. This will provide more frequent, longer, brand new trains; big improvements to three central London stations and more trains per hour through central London with a wider range of more cross-London destinations connected by through services.

Since December 2008 the First Capital Connect Ltd (FCC) Thameslink service has been split at certain times of the week due to regular weekly night and weekend core blocks. These have been to enable the improvement works to ensure delivery of the KO1 train service improvements. As a consequence FCC needed to stable units at Selhurst. The previous schedules reflected the consequential required level of access of a minimum of 88 units per period for stabling, 62 for servicing of the controlled emission toilets and internal cleaning and a minimum of 44 of exterior washing.

From 19<sup>th</sup> May 2012 the regular planned core blocks relating to the Thameslink Programme KO1 cease and therefore FCC has no weekly requirement for stabling at Selhurst. However, there are a few occasions where Network Rail (NR) have a requirement to block the core [both for maintenance purposes and to deliver the additional works in connection with Key Output 1 of the Thameslink programme). At present there are timetabled 4 occasions in 2012/13 and 9 occasions in 2013/14) which leaves a requirement for six of our units to be "stranded" on the south of the Thameslink route. FCC do not have any other stabling options other than Selhurst for these units.

**3.2 Terms not agreed with the facility owner** Please set out here those specific areas of the proposed contract which the applicant has not been able to agree with the facility owner, the reasons for the failure to agree and the reasons for seeking these provisions

FCC have sought to change the Appendix 1 to Schedule 7, 8 and 10 in the Depot Access Agreement to Selhurst between New Southern Railway Ltd (Depot Facility Owner) and First Capital Connect Ltd (Beneficiary). Following on from correspondence 24<sup>th</sup> Jan and sub sequential verbal discussions, on 9<sup>th</sup> March 2012 we proposed to amend the access agreement schedules to reflect the Thameslink Programme Key Output 1 (KO1) timetable changes to a min of 0 for normal service and 18 for period where there is a core block to facilitate access for our 6 units that are required to be stabled south of the block to ensure they are in the right place to run the morning service and meet our Service Level Commitments.

FCC has to date been unable to get Southern to engage in meaningful negotiations regarding our proposed changes to the schedules. Southern are willing to reduce the schedules to a minimum or 0 however are not willing to provide access for FCC during the core blocks where FCC have no other stabling options. Indeed Southern have stated (from Eve Boyle - Engineering Contracts Manager – Southern, email 11<sup>th</sup> April 2013)

"You had proposed that FCC have a zero minimum in the normal course of operation. This would not 'reserve' any space for FCC as a default, which would mean in turn that we could plan to utilize all the depot capacity at Selhurst."

Given the scale of FCC's current stabling and the lack of any changes to Southern's services or equipment, it's hard to understand how such a small volume of weekend stabling could not be accommodated.

From July 14<sup>th</sup> 2012 (the first of the core blocks) if Southern do not make available stabling facilities at Selhurst FCC will be unable to deliver our SLC commitment as there are no other options for stabling the necessary units south of the river. Southern have responded negatively to our request to give us any access to Selhurst post May 18<sup>th</sup> 2012 claiming due to their desire to utilise all the capacity at Selhurst for the maintenance and therefore will not agree to any minimum level higher than zero to Appendix 1, Schedules 7, 8 and 10.

Quoted from email from Eve Boyle 19/4/2012 giving Southern's position over our request for access during

the planned core blocks post May 19th 2012 for 6 units:-

"As you know we are finding it difficult to accommodate FCC's aspiration for guaranteed access at Selhurst at specific dates via a form of access agreement. We believe FCC's current proposal is not wholly equitable to Southern's operation and our ability to plan: as discussed, when FCC originally indicated it was withdrawing regular stabling at Selhurst, Southern developed a maintenance plan which utilised the much needed additional capacity released by FCC departure."

In view of our past experience where ad hoc requests to Southern for stabling has been refused, without the higher minimum access number for planned core blocks in the access contract FCC do not have the sufficient comfort that this essential facility will be made available to stable our units. FCC is eager to understand how our small stabling need to support the delivery of our SLC is "...not wholly equitable to Southern's operation and our ability to plan" but have been unable to get Southern to explain what they mean or explore ways of finding a mutually agreeable solution.

The only other tabled option from Southern as per Fleet Contracts Manager Eve Boyle email 2<sup>nd</sup> May was a deviation from the template model access agreement with a variable charging arrangement driven by Southern's perceived capacity.

#### Further Detail of Core Block Requirement

#### **2012/13 – planned core blocks**

16	Sun 15 Jul 2012	01:45	Mon 16 Jul 2012	04:00	West Hampstead Sth Jn	Herne Hill	D&U MOL, D&U Slows
34	Sun 18 Nov 2012	01:45	Mon 19 Nov 2012	04:00	West Hampstead Sth Jn	Herne Hill	D&U MOL, D&U Slows
45	Sun 03 Feb 2013	01:45	Mon 04 Feb 2013	04:00	West Hampstead Sth Jn	Herne Hill	D&U MOL, D&U Slows
52/1	Thu 28 Mar 2013	22:30	Tue 02 Apr 2013	04:00	West Hampstead Sth Jn	Farringdon	D&U MOL, D&U Slows

FCC has a requirement for 6 units to be stabled from Saturday night through to Monday morning for the 3 Sunday blocks above and from Thursday night to the Tuesday morning for the March 2013 block.

#### **2013/14 – planned core blocks**

3	Sun 14 Apr 2013	01:45	Mon 15 Apr 2013	04:00	West Hampstead Sth Jn	Farringdon	D&U MOL, D&U Slows
4	Sun 21 Apr 2013	01:45	Sun 21 Apr 2013	08:45	West Hampstead Sth Jn	Farringdon	D&U MOL, D&U Slows
5	Sun 28 Apr 2013	01:45	Sun 28 Apr 2013	13:45	West Hampstead Sth Jn	Farringdon	D&U MOL, D&U Slows
7	Sun 12 May 2013	01:45	Sun 12 May 2013	13:45	West Hampstead Sth Jn	Farringdon	D&U MOL, D&U Slows
10	Sun 02 Jun 2013	01:45	Mon 03 Jun 2013	04:00	West Hampstead Sth Jn	Herne Hill	D&U MOL, D&U Slows
12	Sun 16 Jun 2013	01:45	Mon 17 Jun 2013	04:00	Kentish Town Jn	Farringdon	D&U MOL, D&U Slows
13	Fri 21 Jun 2013	22:30	Mon 24 Jun 2013	04:00	Kentish Town Jn	Farringdon	D&U MOL, D&U Slows
22	Fri 23 Aug 2013	22:30	Tue 27 Aug 2013	04:00	Kentish Town Jn	Farringdon	D&U MOL, D&U Slows
23	Sun 01 Sep 2013	01:45	Mon 02 Sep 2013	04:00	West Hampstead Sth Jn	Herne Hill	D&U MOL, D&U Slows

FCC has a requirement for 6 units to be stabled from Saturday night through to Monday morning for the 7 Sunday blocks above, from Friday night to the Monday morning for the June 2013 block and from Friday night to the Tuesday morning for the August 2013 block.

**3.3 Departure from ORR's template depot access contract** Please set out here, with reasons, any areas where the drafting of the proposed contract omits, amends or adds to the ORR's published template depot access contract (as appropriate, cross-referencing to the answers below). Wherever the proposed contract contains a new process (e.g. a self-modification provision) the ORR will wish to see a flowchart illustrating that the process is robust, internally consistent and leaves no loose ends

None

**3.4 Duration of contract** Please indicate the commencement date sought for the proposed contract, and provide justification for the proposed duration if appropriate

FCC needs the stabling facility at Selhurst to be available from 14<sup>th</sup> July 2012. However the proposed changes to the Appendix 1, which have been agreed by Southern, would be able to apply from May 17<sup>th</sup> 2012 (when the KO1 core blocks cease).

## 4. The expression of access rights and the consumption of capacity

**4.1 Benefits** Please set out what specific benefits will result from the proposed contract. In particular, please describe any new rights sought or significant changes in the facilities or services to be used, their benefits and any impact on existing beneficiaries.

The facility is necessary to ensure FCC can deliver its SLC commitment to the DfT when NR block the core. FCC require an additional 6 units to be stabled south of the blocks to ensure they are able to service the morning timetable once the core blocks have been lifted. There are no other alternative stabling locations for FCC south of the blocks other than Selhurst. This facility has always been available to FCC and the previous franchisee.

In addition the benefit of our proposal to have a zero minimum access level for normal service and 18 units minimum access level for planned blocks allows Southern to maximise the capacity of the depot during normal service (57 weeks out of 70) as they are not restricted by a minimum level of access in any contract with ourselves.

However by setting a higher minimum level of access during the planned blocks (13 weeks out of the 70) it ensure FCC is contractual protected with access to Selhurst as we have no other alternatives. This is particularly important in the light of Southern's statements (emails stated above) that they do plan to provide any access to FCC's units. It also allows NR to have the core block possessions necessary for the timely delivery of the Thameslink programme.

**4.2 Adequacy** Please set out to what extent and by what process (if any) the applicant has satisfied himself that the facilities and services required can be supplied at the depot in question.

From March 2006 to November 2008 Southern had to provide for a minimum level of access for 436 units for stabling and exterior and interior cleaning at Selhurst.

From November 2008 until May 17<sup>th</sup> 2012 Southern had to provide for a minimum level of access for 88 units for stabling and 44 units exterior cleaning, 62 units for CET and 62 units for Interior cleaning at Selhurst.

Therefore we do not understand Southern's position in stating they do not have any capacity to provide us access for 18 units for the few weekends where there are core blocks on the Thameslink route to facilitate Network Rails delivery of the Thameslink Programme.

With stabling at Selhurst an established essential facility for the operator of the Thameslink service, it is hard to understand how Southern could have formulated plans which would result in it not being available without checking compatibility with the established industry plans for the delivery of the Thameslink Programme and FCC as the current operator.

**4.3 Franchise obligations** Please indicate the extent to which the use of the depot in the proposed contract is necessary to fulfil obligations under a franchise agreement.

The use of the Selhurst during the few core blocks was a key part in our KO1 Franchise amendment delivery strategy agreed by the DfT in June 2011.

(Section 1.3.7 Core Possession Strategy Post KO1 - Response to the Weekend Possession Strategy – Cyclic Maintenance "Due to insufficient stabling capacity south of the river, FCC would be required to stable 6 units overnight on both Saturday and Sunday at Selhurst Depot.")

As stated above, this is essential to put FCC in the position of not being able to deliver it Monday morning SLC when the core has been blocked for the preceding weekend.

**4.4 Public funding** Please indicate whether (and if so to what extent) the services in the proposed contract are subject to financial support from central or local government (other than the Secretary of State), and provide a point of contact at that body

Our franchise financial model agreed by the DfT as part of the KO1 amendment in June 2011 assumes access to Selhurst. Our contact there is:-

Fiona Moir  
Commercial Manager South  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

**4.6 General guidance given by the Secretary of State and/or Scottish Ministers** Please state here any general guidance given by the Secretary of State or the Scottish Ministers considered relevant to this application and why

N/A

## 5. Charges

Please indicate, and explain the reasons for, how the proposed charges were determined.

N/A

## 6. Enhancement

**6.1 Enhancement details** Where the proposed contract provides for the delivery of any depot enhancements, or the services in the proposed contract are predicated on any planned depot enhancements, please give full details of the relevant enhancement schemes, including a summary of outputs from the scheme, timescales and the extent to which the depot change procedure in the depot access conditions (Part C) has been completed (where appropriate, by reference to submissions made under the ORR's enhancement reporting framework)

N/A

**6.2 Enhancement charges** Please confirm that the arrangements for the funding of any depot enhancements are consistent with the ORR's enhancement framework, and summarise the level and duration of payments, and the assumed rate of return (see Chapter 18, *The Periodic Review of Railtrack's Access Charges: Final Conclusions, Volume 1*, Office of the Rail Regulator, London, October 2000)

N/A

7. Other

**7.1 Associated applications to the ORR** Please indicate whether this application is being made in parallel with, or relates to, any other current or proposed applications to the ORR (e.g. in respect of track, station or light maintenance depot access contracts or agreements)

No

**7.2 Supporting information** Please indicate here any further justification or relevant information in support of the application, including a list and explanation of any other material being submitted (and supply copies with the application)

List of supporting evidence:-  
email chain of correspondence with Southern in particular Eve Boyle the Fleet Contracts Manager

**7.3 Side letters and collateral agreements** Please confirm here that the whole of the proposed contract between the parties has been submitted with this application and that there are no side letters or other documents which qualify or otherwise affect the proposed access contract

Whole contract attached however it is only Appendix 1 schedule 7, 8, 10 that differs from the existing contract .

**7.4 Confidentiality exclusions** Please indicate clearly any elements in the application and the proposed contract that the applicant would wish to exclude from wider consultation on the grounds of confidentiality specified in section 71(2) of the Railways Act 1993, and provide a full justification for each instance by reference to those statutory grounds. Subject to its decision on such exclusions, it is the ORR's intention to publish this application and the proposed contract on the ORR website. (NB under the process established by Schedule 4 of the Railways Act 1993, the ORR is obliged to send a copy of the application **in full** to the facility owner)

8. Certification

*Warning: Under section 146 of the Railways Act 1993, any person who, in giving any information or making any application under or for the purposes of any provision of the Railways Act 1993 (including section 17), makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence and so liable to criminal prosecution*

I certify that the information provided in this form is true and complete to the best of my knowledge

Signed .....

Date .....

Name (in caps) .....

Job title .....

For (company) .....

## 9. Submission

### 9.1 What to send

Please supply, in hard copy, the signed top copy of this application form, three copies of the proposed draft contract, copies of any documents incorporated by reference (other than established standard industry codes or other instruments) and any other attachments, supporting documents or information.

Please also supply the application, the proposed contract and, insofar as it is possible, any other supporting information, in electronic form, by E-mail or on disc, **in plain Microsoft Word format** (*i.e.* excluding any macros, auto-para or page numbering, or other auto-formatting).

### 9.2 Where to send it

Head of Stations and Depots  
Directorate of Access, Planning and Performance  
Office of Rail Regulation  
One Kemble Street  
London  
WC2B 4AN

ORR Form Passenger S17 July 2004 (Issue 3)