



Gordon Herbert  
Senior Executive, Track Access  
Office of Rail and Road  
One Kemble Street  
London  
WC2B 4AN

Simon Bennett  
Customer Relationship Executive  
6th Floor  
Network Rail  
One Eversholt Street  
London  
NW1 2DN

12 February 2021

Dear Gordon,

**Representations to the ORR: Proposed 10th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and Freightliner Limited**

I refer to your letter dated 17 December 2020 where you invited Network Rail Infrastructure Limited to make written representations in respect of the 10th Supplemental Agreement application made by Freightliner Limited under Section 22A of the Railways Act 1993 (the Act). Network Rail's response is below.

This response will detail the Network Rail position on 54 rights being contested under three broad categories of Performance, Route Availability (RA) and Great Eastern Mainline (GEM) capacity. Some rights will appear in multiple sections of this response as a result of Network Rail having material concerns in more than one response area; for example, non-support of a right for both Performance and Route Availability reasons. This response further outlines if a right is not supported absolutely or stipulates the conditions by which we support the sale of rights. Examples of this include the sale of rights for dates before Principle Change Date (PCD) 2026 or at a lower RA than Freightliner wish to secure. Other examples include supporting in line with the submission provided by Freightliner.

The letter will firstly address each of the three previously outlined subject areas of Performance, Route Availability and Great Eastern Mainline Capacity in isolation before providing a summary of the Network Rail position across all 54 rights.

**Performance**

Network Rail did not support 42 rights applications made by Freightliner on the grounds of performance. 24 of these rights applications relate directly to performance concerns for services that are currently running, two rights applications were not supported due to an inadequate amount of performance data from which to provide an informed response (both having run just once during the analysed timeframe) and 16 rights applications were not supported where services have not run whatsoever during the analysed timeframe despite having been assigned slots within the working timetable (WTT), and whilst identified as performance related concerns were not supported in the interest of the best use of capacity of the Network.

Analysis was undertaken during Period 6 20/21 using a Power BI tool and principally reviewed Period 11 through to Period 13 19/20 data. If services had not run during that timeframe, the parameters were extended up to and including Period 5 20/21 with rationale behind these selected timeframes provided in the below.

The Power BI dashboard was developed by the Freight Performance Team and enables us to interrogate each service, drilling down into incident reason codes to identify those services with underlying performance issues. This presents a number of performance metrics at different levels of detail at the click of a button. FDM was an important criteria as the regulatory measure with the regulatory floor of 92.5 % used as the threshold, however the BI tool allows us very quickly to build up a more rounded quantitative picture of services through provision of RTD, A2F and FOC on other delay available to review. Where services operated pre COVID, only pre COVID data was used when assessing performance. This was designed to protect the performance integrity of the Network and prevent importing risk on the Network and all users for rights applications that in the instance of Freightliner would be sold through to at least PCD 2026.

Where services didn't meet the 92.5 % FDM regulatory target then the Power BI tool was used to look at the incidents which contributed to this. Where these were big one-off incidents such as landslips, severe weather or track faults, the number of FDM failures were calculated for these incidents and a view was taken whether performance removing these Network Rail attributable incidents was generally good through for example consideration of other headline figures such as RTD and A2F to arrive at a pragmatic conclusion about the performance of a service. As a result of this, there were 27 instances in which Network Rail supported services that had an FDM below 92.5 % where it was identified that the poor performance was reasonably thought outside of Freightliners control. These form part of the 9<sup>th</sup> Supplemental Agreement (SA) Section 22. We think that these 27 services endorsed despite being below the regulatory target of FDM are important to highlight as they demonstrate rounded approach to determine the viability of selling rights to run on the Network. It further evidences our approach in reviewing of applications on a case by case basis using a range of measures to reach our conclusion. This is contrary to the assertion by Freightliner that advancement of rights was exclusively based on FDM. By using supporting metrics that Freightliner have a significant input in shaping, we further contest that the performance analysis undertaken was exclusively a "measure of how well Network Rail is performing rather than Freightliner"

Where services hadn't operated pre COVID, data analysis was extended to include periods of time where the Network has been impacted by changes brought about by COVID (up to and including Period 5 20/21) with the same criteria as stated above applied. Network Rail supported ten services that fell into this criterion (again, forming part of the 9<sup>th</sup> SA Section 22), with this in place to ensure that the aspirations of operators were not unduly inhibited by events outside of the control of Network Rail and Freightliner. A further step taken was to discount performance analysis from 2019 for the flows in question. This was to ensure a fair analysis based on current performance of Freightliner services, especially in relation to the flows in question (Mendip Quarry) where Freightliner had taken this contract over in the latter part of 2019 (3 November) and therefore it was deemed reasonable that these services should have a bedding in period.

In the absence of any further information, flows that had not run at all or did not have an adequate sample size were not supported by Network Rail. This was due to insufficient evidence for an informed decision to be made being available. An adequate sample size was deemed a service that had run a minimum of five times within the stipulated eight periods (P11 19/20 through to P5 20/21) which presented a low baseline from which to provide evidence.

In summary, you can see that during this initial analysis, Network Rail went to significant lengths to drill down into the detail and to balance the needs of Freightliner as an operator and the integrity of the wider Network to provide a robust rationale behind rights that would and wouldn't be supported.

## Performance Analysis Revisited

Freightliner assert in their Form F submission that “significant performance improvement” has been “made over the intervening months” and thus it is important for us to validate whether that statement is accurate. In order to provide a view on performance improvement activity to date, we have provided the ORR with Mendip Performance Improvement Plan trackers and Wales & Western Region Periodic performance reports. What we believe also pertinent to point out is overall, the network has performed much better during COVID than before and reached ‘best ever’ levels of performance for both passenger and freight services during the first Lockdown in April / May. Improvement was visible across most groups of services operating pre- and during COVID, with normally the poorest performing services pre-COVID seeing the largest improvement in performance reflecting the network effect of the reduced levels of traffic (and passenger numbers). This is observable through the following headlines:

- A2F MAA improved from 85.8 % in P13 19/20 to 87.7 % P10 20/21
- FDM MAA improved from 92.9 % in P13 19/20 to 94.4 % P10 20/21
- PPM MAA improved from 86.2 % in P12 19/20 to 91.4 % P10 20/21

We think these step changes in Network wide performance are important to view in relation to the Mendip’s performance analysis, as it provides context from which to view the relative performance of the services in question.

In recognition of this contestation that significant work has been done between Network Rail and Freightliner to improve performance of this service group, Network Rail have taken the step to refresh the performance analysis of the services in question to understand through a data, evidence based approach if there had been any significant step changes as asserted by Freightliner. The data set reviewed was Period 6 through to Period 8 20/21. Given the changes seen during 20/21 within the performance space, brought about by significant reductions in passenger numbers and passenger services, the criteria set is required to capture step changes in performance of services brought about by performance improvement activity as opposed to residual benefits seen through a significant and temporary change in Network conditions. This is particularly pertinent when you consider these rights are being sold until at least 2026. The main driver here is to ensure the needs of Freightliner are balanced with the integrity and needs of the Network for all users.

As a result, Freight Delivery Metric (FDM), Right Time Departure (RTD) and Arrival to Fifteen (A2F) were deemed as providing a rounded picture of the performance of Freightliner Mendip’s flows to ascertain whether their performance had materially improved to allow us to confidently support these services. This, we anticipate is something Freightliner will be supportive of given the concern raised in their Form F around the use of FDM. Baselines were assigned to all three metrics with all three required to be above that baseline position for Network Rail to support. These were as follows:

- FDM was aligned to the regulatory target of 92.5 %
- A2F was aligned to the 20/21 jointly agreed Freightliner and Network Rail target of 84 %
- RTD was aligned to the 20/21 jointly agreed Freightliner and Network Rail target of 81 %

Given that these are mutually agreed and understood targets with our customer it seems only natural that these would reflect our performance expectations for the sale of rights and through our internal consultations. In all but six instances the conclusion drawn regarding performance remained the same with no “significant performance improvements” being observable. A breakdown of this is provided in the below:

## Non – Runners

Whilst captured under the heading of performance in the Form F submission, there are a number of

services that appear to be non-runners. 12 services had not run during the analyzed timeframe of Period 6 – Period 8 20/21. Given the previous analysis timeframe was Period 11 19/20 – Period 5 20/21, this means the 12 services in question have not run for eleven consecutive periods. In ten of the twelve instances these rights have assigned paths in both the May 2020 and December 2020 WTT and are contained in the May 2021 offer, the other two services have not had WTT paths for Dec 2020 or May 2020 and do not have a May 2021 WTT offer. Further to having no May 2021 WTT offer, they are not contained in the Freightliner May 2021 timetable offer dispute notice that has been submitted to Network Rail. In our view this would not represent best use of Network capacity.

We have engaged Freightliner on this to understand if there are any circumstances around the non-use of the rights such as future use aspirations and they have informed us that they believe in some instances that these rights are running. With further investigation, we suspect that this is due to origins and destinations that differ from the proposed rights table or with different class locos in use versus what is stated in the proposed rights table. We are currently exploring this further with Freightliner to establish the right information to contractualise and validate that these rights are performing in line with the information sought through contractualisation.

**Figure 1: Non-Runners P11 (19/20) through to P8 (20/21) Inclusive**

Train Reporting Number	Days per Week	Origin	Destination	May 2020 WTT Path?	Dec 2020 WTT Path?	May 2021 WTT Offer?
6V06	WO	CRAWLEY F.Y. (FLHH)	ACTON TC	Yes	Yes	Yes
6V90	MSX	DAGENHAM DOCK ARC	ACTON TC	Yes	Yes	Yes
6V90	MO	DAGENHAM DOCK ARC	ACTON TC	Yes	Yes	Yes
7C39	SX	ACTON TC	MEREHEAD QUARRY (FHH)	Yes	Yes	Yes
6V06	SO	CRAWLEY F.Y. (FLHH)	MEREHEAD QUARRY (FHH)	Yes	Yes	Yes
7A29	MSX	MEREHEAD QUARRY (FHH)	THEALE FOSTER YEOMAN	Yes	Yes	Yes
7C31	TThO	THEALE FOSTER YEOMAN	MEREHEAD QUARRY (FHH)	No	No	No (and not contained in offer dispute notice)
7C31	WFO	THEALE FOSTER YEOMAN	WHATLEY QUARRY FLINER HH	No	No	No (and not contained in offer dispute notice)
7A74	SX	WHATLEY QUARRY FLINER HH	THEALE ARC	Yes	Yes	Yes
7C74	SX	THEALE FOSTER YEOMAN	WHATLEY QUARRY FLINER HH	Yes	Yes	Yes
6C70	WFO	AVONMOUTH HANSONS SDG	WHATLEY QUARRY F LINER HH	Yes	Yes	Yes
6054	MO	HUMBERSTONE ROAD	ALLINGTON A.R.C. SDG. HANSON GG (FLHH)	No, but corresponding class 7 right is in WTT	Yes	Yes

One service that was not supported due to poor performance in the initial analysis period (P11 19/20 – P5 20/21) did not run during Period 6 – Period 8 20/21 and therefore there is no additional evidence to support changing the position of not supporting these rights. This leads us to question what improvement activity is being referenced in this instance

**Figure 2: Poor Performers P11 – P13 (19/20) that did not run P6-P8 (20/21)**

Train Reporting Number	Days per Week	Origin	Destination	P11 - P13 19/20 Initial Analysis				P6-P8 20/21 Revisited Analysis			
				Rationale	FDM (%)	A2F (%)	RT Dep (%)	Has Service Run?	FDM (%)	A2F (%)	RT Dep (%)
6E46	SX	MEREHEAD QUARRY (FHH)	HITCHIN ENGINEERS SIDINGS FHH	Performance Concern	81.8	45.5	18.2	no	N/A	N/A	N/A

19 services fail to meet baseline targets in some, or all the three metrics used as criteria. FDM (92.5 % - baseline regulatory target), A2F (84 % - agreed 20/21 target), RTD (81 % - agreed 20/21 target). Given the significantly favorable performance headwinds that the Network provided during the analysed periods in which there has been record breaking good performance, services unable to meet these fundamental indicators even in such favorable conditions cannot presently be supported by Network Rail. Within figure 3 there are a further two services that were not supported initially due to the Anglia position on the GEML to not sell additional firm rights beyond PCD Dec 2021 (covered in more depth in the GEML element of this response) and in our revised analysis subsequently do not meet the baseline performance criteria.

**Figure 3 : Services that did not meet performance benchmark criteria in initial analysis or revisited analysis periods**

Train Reporting Number	Days per Week	Origin	Destination	P11 - P13 19/20 Initial Analysis				P6-P8 20/21 Revisited Analysis			
				Rationale	FDM (%)	A2F (%)	RT Dep (%)	Has Service Run?	FDM (%)	A2F (%)	RT Dep (%)
7A15	SX	MEREHEAD QUARRY (FHH)	ACTON TC	Performance Concern	92	61.2	65	yes	90.6	77.4	39.6
6L21	SX	WHATLEY QUARRY FLINER HH	DAGENHAM DOCK ARC	Performance Concern	81.6	71.1	47.4	yes	98	96	54
7L54	SX	ACTON TC	HARLOW MILL FHH	Performance Concern	86.4	59.1	54.5	yes	100	82.1	71.4
7M53	WFO	ACTON TC	WATFORD LONDON CONCRETE (FLHH)	Performance Concern	85.7	71.4	42.9	yes	90	80	80
6001	ThSX	ACTON T.C.	NEWHAVEN DAYS AGGS.	Performance Concern	80	60.9	47.8	yes	100	75	87.5
6L26	SX	ACTON TC	DAGENHAM DOCK ARC	Performance Concern	89.2	81.1	67.6	yes	91.7	91.7	66.7
6L30	MO	ACTON TC	CHELMSFORD RECEPTION	Performance Concern	77.1	69.7	72.7	yes	75.9	51.7	65.5
6L30	MSX	ACTON TC	CHELMSFORD RECEPTION	Performance Concern	77.5	44.7	60.5	yes	75.9	51.7	65.5
7V55	EWD	STEWART'S LANE TARMAC FHH	ACTON TC	Performance Concern	91.9	81.1	48.6	yes	82.6	78.3	82.6
7A48	SX	WEST DRAYTON HANSON AGGS FLHH	ACTON TC	Performance Concern	80	46.7	46.7	yes	100	78.6	78.6
7012	SX	MEREHEAD QUARRY (FHH)	WOKING DOWN YARD	Performance Concern	91.7	75	66.7	yes	93.3	73.3	86.7

7040	SX	MEREHEAD QUARRY (FHH)	EASTLEIGH F.Y. AGG (FLHH)	Performance Concern	50	20	60	yes	100	60	60
6053	SX	WHATLEY QUARRY F LINER HH	SOUTHAMPTON UP YARD (FL)	Performance Concern	75	80	50	yes	91.7	91.7	41.7
6V62	SX	SOUTHAMPTON UP YARD (FL)	WHATLEY QUARRY F LINER HH	Performance Concern	80	40	60	yes	100	31.3	100
7C19	SX	WHATLEY QUARRY F LINER HH	WESTBURY DOWN TC	Performance Concern	87.5	62.5	50	yes	100	53.3	46.7
7C27	SX	WESTBURY DOWN T.C.	EXETER RIVERSIDE HANSON	Performance Concern	85.7	57.1	42.9	yes	93.3	76.7	80
7V16	SX	FAREHAM ARC SDGS	WHATLEY QUARRY FLINER HH	Performance Concern	78.6	66.7	63.3	yes	94.7	73.7	89.5
6V76	ThO	CLIFFE HILL STUD FARM TARMAC FHH	WEST DRAYTON ARC	Performance Concern	80	60	60	yes	91.7	25	91.7
6047	SX	ACTON TC	ARDINGLY HANSON AGGREGATES FHH	Performance Concern	92	72	72	yes	87.1	74.2	93.5
6V53	SX	HITCHIN ENGINEERS SIDINGS FHH	MEREHEAD QUARRY (FHH)	Anglia GEML Position	86	86	57	yes	100	58.3	66.7
6V12	SX	CHELMSFORD RECEPTION	ACTON TC	Anglia GEML Position	97	89	68	yes	100	85.7	45.0

Four services did not run in the initial analysis period (P11 – P5 19/20) and were not supported on the grounds that they were not using the assigned capacity and there was no further supporting information to justify supporting the rights. They did however run in the subsequent analysis period of P6 to P8 but did not meet the outlined performance criteria and thus remain unsupported at present.

**Figure 4: Services that did not run in P11 – P13 (19/20) but did so P6 – P8 (20/21) that do not meet performance benchmark criteria**

Train Reporting Number	Days per Week	Origin	Destination	P11 - P13 19/20 Initial Analysis				P6-P8 20/21 Revisited Analysis			
				Rationale	FDM (%)	A2F (%)	RT Dep (%)	Has Service Run?	FDM (%)	A2F (%)	RT Dep (%)
7C29	MO	ACTON TC	MEREHEAD QUARRY (FHH)	Not Run	N/A	N/A	N/A	Yes	95.6	75.6	91.1
6C53	SX	ACTON TC	MEREHEAD QUARRY (FHH)	Not Run	N/A	N/A	N/A	Yes	93.8	68.8	75
6A20	FO	WHATLEY QUARRY FLINER HH	ACTON TC	Run once	N/A	N/A	N/A	Yes	97.9	79.2	41.7
6A46		MEREHEAD QUARRY (FHH)	ACTON TC	Not Run	N/A	N/A	N/A	Yes	100	33	19

Six services meet the FDM, A2F and RTD requirements and therefore are viewed to have benefitted sufficiently from the joint performance work undertaken with Freightliner.

**Figure 5: Poor Performers P11 – P13 (19/20) that have demonstrably improved performance in revisited analysis period**

Train Reporting Number	Days Per Week	Origin	Destination	Rationale	P11 - P13 19/20 Initial Analysis			P6-P8 20/21 Revisited Analysis				
					FDM (%)	A2F (%)	RTD (%)	Has Service Run?	FDM (%)	A2F (%)	RTD (%)	Above Baseline Performance Requirements?
6F54	SO	Cliffe Hill Stud Farm Tarmac FHH	Humberstone Road	Not Run	N/A	N/A	N/A	yes	100	100	100	yes
7069	FO	Acton TC	Crawley F.Y (FLHH)	Performance Concern	83.3	78.9	76.2	yes	94.1	90.6	81.3	yes
6V34	SX	Dagenham Dock ARC	Acton TC	Performance Concern	83.3	79.2	75	yes	100	95	95	yes
6B25	SX	West Drayton Hanson AGGS (FLHH)	Stoke Gifford FLHH	Performance Concern	84.2	84.2	57.9	yes	100	91.3	95.7	yes
7035	SX	Westbury Down TC	Fareham ARC SOGS	Performance Concern	70.5	56.8	59.1	yes	100	100	100	yes
6087	SO	Acton TC	Allington Hanson AGG FHH	Run Once	N/A	N/A	N/A	yes	97.6	95.2	92.9	yes

The above suggests that in all but six instances the initial performance analysis undertaken remains valid and reflective of Freightliner Mendip's flows performance and is a testament to the initial validation work done to identify services that were good performers and services that were not.

### Performance Improvement Activity

Figure 1 – Figure 4 demonstrate that the performance improvement activity undertaken with Freightliner to date has not translated into material improvements in key indicators used to establish if a service is performing well or not. Regional consultation has highlighted that Western Region in particular have concerns around quarry RTD performance, a lack of robustness of the overall train plan for which rights are being sought and a requirement to see significant and consistent improvement in performance before being able to support firm rights.

This articulated RTD concern across the Mendip's flows can be seen in Figure 6 which shows stagnation over the last twelve months in RTD for both Whatley and Merehead quarries. By comparing the already

established sample periods of P11-P13 19/20 and P6-P8 20/21 we see that RTD for Whatley was 35.6 % and 36.5 % respectively and for Merehead was 50.2 % and 47.7 % respectively. This evidences the lack of tangible outputs seen through performance improvement activity to date in a metric that Freightliner are able to influence. Comparing this to a similar type of operation in the form of terminals at Peak Forest and Mountsorrel, these locations RTD Year to Date across multiple operators stands at 91.1 % and 72.9% respectively. This is of significant concern to Network Rail in terms of the risk this imports onto the Network not only now, but through to 2026 and beyond and thus is an area we are very keen to work with Freightliner to improve.

**Figure 6: Whatley and Merehead Quarry RTD and RTA Performance 19/20 through to 20/21**



### Performance Improvement Activity – Next Steps

In reference to Freightliner citing mixed messages from the Freight Team and Western Region, Network Rail do not agree with this statement. The contractualisation of rights in line with the timescales stipulated by Western Region is a shared Network Rail wide aspiration. What this does not mean is that Network Rail wishes to contractualise demonstrably poor performing services which import risk on the Network. Indeed, to do so would be at odds with the challenge set to industry to maintain the high levels of performance that have been experienced during 19/20. The rerun of performance data reinforces that the majority of unsupported rights simply do not perform to an adequate standard presently. To sell firm rights on the premise that it aligns to Western Regions stipulated timescales in supporting future timetable development is detrimental to the operation of the Network and not within the spirit of what was being asked. In essence, this was not an invitation to contractualise poor performing services that have an overtly negative performance impact on the Network.

Notwithstanding the above, Network Rail recognizes that there is a need to continue to work with Freightliner to find solutions to performance challenges. To date our engagement has been more or less exclusively with Freightliner only, and on the basis of the performance data captured, it suggests that a change in approach is required to derive tangible performance benefits. As such we have established buy in from Mendip Rail Ltd and Freightliner to establish a tripartite forum that works specifically on performance improvement of the contested rights within the 10<sup>th</sup> Supplemental. We have mutually agreed that our focus and approach should be on using a data driven approach to allow us to target and deep dive into specific performance issues impacting headcodes with a view to resolution and improvement. Appendix A is the tripartite endorsed performance improvement milestone plan on a page. Upon delivery of this performance improvement milestone plan, Network Rail will review the performance outputs to establish if our position on these contested rights can change, this review process you will note is built into the milestone plan. This position aligns to Western Region wanting to see significant and consistent improvement in performance before being able to support firm rights.



For clarity the scope of the improvement plan shared within Appendix A covers all 38 rights displayed in Figure 1 – Figure 4 inclusive.

The conclusion reached is as per Network Rail's commitment to 'building back better' and to embed improved performance. This is in line with the Government's expectations and is in the interests all Network users. Additionally, it serves as evidence of Network Rail taking steps to "manage performance risks actively" as we "seek to retain [performance] benefits going forward" as per the 8<sup>th</sup> December 2020 ORR letter to Andrew Haines.

## **Performance Summary**

In summary Network Rail continue to not support 38 services. 12 due to services that were captured in the performance element of this response as a result of not running and requiring further understanding from Freightliner as to what path, headcode, origin and destination they wish to utilise and therefore contractualise, thus ensuring efficient use of the Networks capacity to ensure that any contractualised rights table reflects the actual operation of those services. 26 services remained unsupported due to continuing poor performance of these services. This has been communicated to Freightliner and we have an agreed performance improvement plan in place with stakeholders. We have further agreed to review the success of these interventions to understand if our position on these rights can be changed in line with the milestone plan laid out in Appendix A. Network Rail do however acknowledge that six services do now perform at an adequate level to be supported from a performance perspective.

It must be noted at this point that due to the size of the submission of rights that Freightliner wished to contractualise (close to some 200 rights), the 43 rights total that did not meet the initial performance analysis criteria outlined in the opening section of this response were not reviewed beyond their train performance characteristics. As a result of being asked to provide our full representations by way of response to the 10th Supplemental Section 22A submitted by Freightliner Ltd, we have conducted a full consultation across all business areas to establish the viability of selling these rights. This is particularly pertinent in the case of the six rights within figure 5, which as a result of improvements we are now satisfied to support from a performance perspective. The following sections of this response will highlight where rights submitted by Freightliner are not supported for reasons outside of performance reasons and this response will conclude by clearly stating which of 54 rights submitted within the 10<sup>th</sup> SA S22A we do support.

## **Limiting the sale of some access rights due to Route Availability (RA) constraints**

Network Rail has not been able to fully support a number of Heavy Axle Weight (HAW) RA10 access rights proposed by Freightliner's 'Mendip' Supplemental Agreement, due mostly to the declining condition of numerous metallic underbridges on Southern Region but also the condition of select underbridges on Anglia Route.

In very round figures, it would require £140m per Control Period to maintain the steady state of Southern Region's metallic underline bridge stock, undertake relevant renewals at a sustainable level and catch up on a backlog of maintenance created over several decades. Such funding would enable Southern Region to support HAW RA10 access rights on a more long-term horizon than is proposed here. Similarly, the aforementioned underbridges on Anglia Route must see renewal before further HAW RA10 access rights can be supported. These representations detail all relevant underbridges which have led Network Rail to limit the sale of some HAW RA10 access rights to Freightliner.

Freightliner's Section 22a application refers to 9 train slots where, for RA reasons, Network Rail has not been able to agree to the sale of access rights up to Principal Change Date (PCD) December 2026. The number of contested HAW train slots is actually higher but, for reasons pertaining to how the 9th and 10th Supplemental Agreements have been managed through the consultation process, the final number has not been possible to report until now.

There are 14 HAW RA10 access rights which, for RA reasons, Network Rail can only agree a limited period of sale – the time limit relates to the RA10 characteristic of the proposed access right. The 14 HAW RA10 access rights, and the periods of sale that Network Rail can agree to, are listed further below in Figure 7.

In each of the 14 cases, the access right proposal by Freightliner demands a materially greater use of the network than that already afforded to them in their Schedule 5 Rights Table, either in terms of days run or physical use of the network (i.e. new Lines of Route).

In each of the 14 cases, Network Rail is able to support the sale of the access right up to PCD December 2026 if the RA10 characteristic is removed, meaning the RA of the relevant service would default to that which is published in the Sectional Appendix.

These 14 cases aside, Network Rail is keen to point out that numerous other HAW access rights have been agreed for sale up to PCD December 2026 in Freightliner's 9th Supplemental Agreement – these are on Lines of Route where no HAW constraints have been cited. Where it is controlled and safe to do so, it is important that Network Rail continues to support the sale of HAW access rights on the network and this continues to be the case on many parts of the network.

**Figure 7: Contested RA10 access rights**

Contested RA10 access rights			RA10 agreeable term	Published RA agreeable term	Relevant HAW constraint(s) by Engineering Line Reference (ELR)
7069	(MTWThO)	Acton TC – Crawley F.Y. (FLHH)	<p><b>Prior to Section 22a application:</b> Up to PCD December 2022 only (due to Southern Region HAW constraints)</p> <p><b>Proposed revision to RA10 term:</b> <i>RA10 access rights for this service are granted only for a temporary duration equal to, and ending on, the soonest date of expiry of any relevant RT3973HAW dispensation form.</i></p> <p>Network Rail proposes the statement above is applied to the 'Special Terms' of this access right – the RA field for this access right should be left unpopulated. See <b>Proposed revision to RA10 term – explained</b> section below.</p>	Up to PCD December 2026	<p>Southern Region metallic underline bridges on ELRs:</p> <p>WLL VTB1 VTB2 RED2 VTB3</p> <p>See <b><i>In focus:</i></b> <b><i>Southern Region</i></b> section</p> <p>The specific bridges are listed in <b><i>Appendix C</i></b></p>
7069	(FO)	Acton TC – Crawley F.Y. (FLHH)	<p><b>Prior to Section 22a application:</b> Up to PCD December 2022 only (due to Southern Region HAW constraints)</p> <p><b>Proposed revision to RA10 term:</b> <i>RA10 access rights for this service are granted only for a temporary duration equal to, and ending on, the soonest date of expiry of any relevant RT3973HAW dispensation form.</i></p> <p>Network Rail proposes the statement above is applied to the 'Special Terms' of this access right – the RA field for this access right should be left unpopulated. See <b>Proposed revision to RA10 term – explained</b> section below.</p>	Up to PCD December 2026	<p>Southern Region metallic underline bridges on ELRs:</p> <p>WLL VTB1 VTB2 RED2 VTB3</p> <p>See <b><i>In focus:</i></b> <b><i>Southern Region</i></b> section</p> <p>The specific bridges are listed in <b><i>Appendix C</i></b></p>

7068	(SX)	Acton TC – Purley Foster Yeoman	<p><b>Prior to Section 22a application:</b> Up to PCD December 2022 only (due to Southern Region HAW constraints)</p> <p><b>Proposed revision to RA10 term:</b> <i>RA10 access rights for this service are granted only for a temporary duration equal to, and ending on, the soonest date of expiry of any relevant RT3973HAW dispensation form.</i></p> <p>Network Rail proposes the statement above is applied to the 'Special Terms' of this access right – the RA field for this access right should be left unpopulated. See <b>Proposed revision to RA10 term – explained</b> section below.</p>	Up to PCD December 2026	<p>Southern Region metallic underline bridges on ELRs:</p> <p>WLL VTB1 VTB2</p> <p>See <b><i>In focus:</i></b> <b>Southern Region</b> section</p> <p>The specific bridges are listed in <b>Appendix C</b></p>
7048	(SX)  Please note: Freightliner only has (TO) and (ThO) train slots for 7048 – NR also contests any proposal for access rights where capacity is not yet established	Acton TC – Crawley F.Y (FLHH)	<p><b>Prior to Section 22a application:</b> Up to PCD December 2022 only (due to Southern Region HAW constraints)</p> <p><b>Proposed revision to RA10 term:</b> <i>RA10 access rights for this service are granted only for a temporary duration equal to, and ending on, the soonest date of expiry of any relevant RT3973HAW dispensation form.</i></p> <p>Network Rail proposes the statement above is applied to the 'Special Terms' of this access right – the RA field for this access right should be left unpopulated. See <b>Proposed revision to RA10 term – explained</b> section below.</p>	Up to PCD December 2026	<p>Southern Region metallic underline bridges on ELRs:</p> <p>WLL VTB1 VTB2 RED2 VTB3</p> <p>See <b><i>In focus:</i></b> <b>Southern Region</b> section</p> <p>The specific bridges are listed in <b>Appendix C</b></p>
7012	(MTFO)  Freightliner propose to amend this access right from (WThO) to (SX) – NR contests the addition of (MTFO) operating days	Merehead Quarry (FHH) – Woking Down Yard	<p><b>Prior to Section 22a application:</b> Up to PCD December 2022 only (due to Southern Region HAW constraints)</p> <p><b>Proposed revision to RA10 term:</b> <i>RA10 access rights for this service are granted only for a temporary duration equal to, and ending on, the soonest date of expiry of any relevant RT3973HAW dispensation form.</i></p> <p>Network Rail proposes the statement above is applied to the 'Special Terms' of this access right – the RA field for this access right should be left unpopulated. See <b>Proposed revision to RA10 term – explained</b> section below.</p>	Up to PCD December 2026	<p>Southern Region metallic underline bridges on ELRs:</p> <p>SAL BAE2 BAE1 BML1</p> <p>See <b><i>In focus:</i></b> <b>Southern Region</b> section</p> <p>The specific bridges are listed in <b>Appendix E</b></p>

6087	(SO)	Acton TC – Allington Hanson Agg FHH	<p><b>Prior to Section 22a application:</b> Up to PCD December 2022 only (due to Southern Region HAW constraints)</p> <p><b>Proposed revision to RA10 term:</b> <i>RA10 access rights for this service are granted only for a temporary duration equal to, and ending on, the soonest date of expiry of any relevant RT3973HAW dispensation form.</i></p> <p>Network Rail proposes the statement above is applied to the 'Special Terms' of this access right – the RA field for this access right should be left unpopulated. See <b>Proposed revision to RA10 term – explained</b> section below.</p>	Up to PCD December 2026	<p>Southern Region metallic underline bridges on ELRs:</p> <p>WLL ATL CAT NTL XTD PWS1</p> <p>See <b><i>In focus:</i></b> <b><i>Southern Region</i></b> section</p> <p>The specific bridges are listed in <b>Appendix B &amp; C</b></p>
6001	(MTWFO)  Freightliner propose to amend this access right from (ThO) to (ThSX) – NR contests the addition of (MTWFO) operating days	Acton TC – Newhaven Days Aggregates	<p><b>Prior to Section 22a application:</b> Up to PCD December 2022 only (due to Southern Region HAW constraints)</p> <p><b>Proposed revision to RA10 term:</b> <i>RA10 access rights for this service are granted only for a temporary duration equal to, and ending on, the soonest date of expiry of any relevant RT3973HAW dispensation form.</i></p> <p>Network Rail proposes the statement above is applied to the 'Special Terms' of this access right – the RA field for this access right should be left unpopulated. See <b>Proposed revision to RA10 term – explained</b> section below.</p>	Up to PCD December 2026	<p>Southern Region metallic underline bridges on ELRs:</p> <p>WLL VTB1 VTB2 RED2 VTB3 KJE1 KJE2 STS</p> <p>See <b><i>In focus:</i></b> <b><i>Southern Region</i></b> section</p> <p>The specific bridges are listed in <b>Appendix C &amp; D</b></p>
6V00	(MTWO)  Freightliner propose to amend this access right from (FO) to (ThSX) – NR contests the addition of (MTWO) operating days	Newhaven Days Aggregates – Acton TC	<p><b>Prior to Section 22a application:</b> No agreeable term beyond 6 months (due to Southern Region HAW constraints)</p> <p><b>Please note:</b> Owing to a clerical error, this access right was incorrectly included in the Freightliner 9th Supplemental Agreement – the access right is subject to Southern Region HAW constraints and represents a material increase in RA10 access rights on Southern Region. As such, Network Rail wishes for the additional operating days (i.e. the Monday, Tuesday and Wednesday) to be decisioned in the Section 22a process for the 10th Supplemental Agreement.</p> <p><b>Proposed revision to RA10 term:</b> <i>RA10 access rights for this</i></p>	Up to PCD December 2026	<p>Southern Region metallic underline bridges on ELRs:</p> <p>STS* KJE2 KJE1 VTB3 RED2 VTB2 VTB1 WLL</p> <p>See <b><i>In focus:</i></b> <b><i>Southern Region</i></b> section</p> <p>The specific bridges are listed in <b>Appendix C &amp; D</b></p> <p>* STS line section only permits</p>

			<p><i>service are granted only for a temporary duration equal to, and ending on, the soonest date of expiry of any relevant RT3973HAW dispensation form.</i></p> <p>Network Rail proposes the statement above is applied to the 'Special Terms' of this access right – the RA field for this access right should be left unpopulated. See <b>Proposed revision to RA10 term – explained</b> section below.</p>		HAW traffic on a 6-month basis due to the condition of Glynde Reach Viaduct
7043	<p>(FO)</p> <p>Freightliner propose to amend this access right from (FSX) to (SX) – NR contests the addition of the (FO) operating day</p>	Westbury Down TC – Eastleigh F.Y. Agg (FLHH)	<p><b>Prior to Section 22a application:</b> No previous position given due to clerical error</p> <p><b>Please note:</b> Owing to a clerical error, this access right was incorrectly included in the Freightliner 9th Supplemental Agreement – the access right is subject to Southern Region HAW constraints and represents a material increase in RA10 access rights on Southern Region. As such, Network Rail wishes for the additional operating day (i.e. the Friday) to be decisioned in the Section 22a process for the 10th Supplemental Agreement.</p> <p><b>Proposed revision to RA10 term:</b> <i>RA10 access rights for this service are granted only for a temporary duration equal to, and ending on, the soonest date of expiry of any relevant RT3973HAW dispensation form.</i></p> <p>Network Rail proposes the statement above is applied to the 'Special Terms' of this access right – the RA field for this access right should be left unpopulated. See <b>Proposed revision to RA10 term – explained</b> section below.</p>	Up to PCD December 2026	<p>Southern Region metallic underline bridges on ELRs:</p> <p>SAL BAE2 BAE1 RTJ2</p> <p>See <b><i>In focus: Southern Region</i></b> section</p> <p>The specific bridges are listed in <b><i>Appendix E</i></b></p>
7044	<p>(FO)</p> <p>Freightliner propose to amend this access right from (FSX) to (SX) – NR contests the addition of the (FO) operating day</p>	Westbury Down TC – Botley Foster Yeoman FLHH	<p><b>Prior to Section 22a application:</b> No previous position given due to clerical error</p> <p><b>Please note:</b> Owing to a clerical error, this access right was incorrectly included in the Freightliner 9th Supplemental Agreement – the access right is subject to Southern Region HAW constraints and represents a material increase in RA10 access rights on Southern Region. As such, Network Rail wishes for the additional operating day (i.e. the Friday) to be decisioned in the Section 22a process for the 10th</p>	Up to PCD December 2026	<p>Southern Region metallic underline bridges on ELRs:</p> <p>SAL BAE2 BAE1 RTJ2</p> <p>See <b><i>In focus: Southern Region</i></b> section</p> <p>The specific bridges are listed in <b><i>Appendix E</i></b></p>

			<p>Supplemental Agreement.</p> <p><b>Proposed revision to RA10 term:</b>  <i>RA10 access rights for this service are granted only for a temporary duration equal to, and ending on, the soonest date of expiry of any relevant RT3973HAW dispensation form.</i></p> <p>Network Rail proposes the statement above is applied to the 'Special Terms' of this access right – the RA field for this access right should be left unpopulated. See <b>Proposed revision to RA10 term – explained</b> section below.</p>		
7L29	(EWD)	Acton TC – Purfleet Foster Yeoman	Up to PCD December 2021 only (due to Anglia Route HAW constraints)	Up to PCD December 2026	<p>Anglia Route sub-standard and/or Discrepancy bridges on ELRs:</p> <p>TAH1 TAH2</p> <p>See <b><i>In focus:</i></b> <b><i>Anglia Route</i></b> section</p>
6V28	(SX)	Dagenham Dock ARC – Acton TC	Up to PCD December 2021 only (due to Anglia Route HAW constraints)	Up to PCD December 2026	<p>Anglia Route sub-standard and/or Discrepancy bridges on ELRs:</p> <p>TAH1 TAH2</p> <p>See <b><i>In focus:</i></b> <b><i>Anglia Route</i></b> section</p>
6L43	(TThO)	Acton TC – Dagenham Dock ARC	Up to PCD December 2021 only (due to Anglia Route HAW constraints)	Up to PCD December 2026	<p>Anglia Route sub-standard and/or Discrepancy bridges on ELRs:</p> <p>TAH1 TAH2</p> <p>See <b><i>In focus:</i></b> <b><i>Anglia Route</i></b> section</p>
6V76	(ThO)	Cliffe Hill Stud Farm Tarmac FHH – West Drayton Arc	Up to PCD December 2021 only (due to Anglia Route HAW constraints)	Up to PCD December 2026	<p>Anglia Route sub-standard and/or Discrepancy bridges on ELR:</p> <p>CAW</p> <p>See <b><i>In focus:</i></b> <b><i>Anglia Route</i></b> section</p>

*To note:* 6L46 (SX) Acton – Bow Depot FLHH did previously feature in the contested list of access rights, however, specific remedial bridge works on Anglia Route have subsequently enabled Network Rail to agree to the sale of this particular access right up to PCD December 2026.

Those HAW constraints cited above on Southern Region and Anglia Route are further explained in the later sections of these representations, entitled *In focus: Southern Region* and *In focus: Anglia Route*.

### **What is Route Availability (RA)?**

RA is a measure of the axle load that the network infrastructure can safely bear – different Lines of Route have different RA ratings. The higher the RA figure of a route, the stronger the infrastructure, thus the heavier the axle weights can be for freight traffic on that route.

The weakest load-bearing structure on a Line of Route (for example, a bridge) determines the maximum RA of that route. Items of rolling stock also have an RA figure associated with them based on their axle weight. Any train with the same or lower RA as the Line of Route may travel on that line.

The RA of vehicles and locomotives on the network is not permitted to exceed the RA number for the route over which a train is to run unless the train movement is permitted by the application of special conditions.

Network Rail permits HAW freight services on the UK rail network at its discretion through the issue of RT3973 HAW dispensation forms, which are time-bound dispensations (usually for 24 months) and contain the aforementioned special conditions.

### **Proposed revision to RA10 term – explained**

Network Rail has recently considered that, rather than apply a specific expiry date to the RA10 characteristics of the 10 contested access rights on Southern Region, there is greater utility in proposing that the period of sale matches the shortest duration of any relevant RT3973 HAW dispensation form which underpins each service. In this way, the RA10 characteristic of the proposed access right can exist on a rolling basis where its underpinning RT3973 HAW dispensation form is subsequently renewed by Network Rail (if renewed). These dispensations are usually 24 months in duration upon renewal, which is a period no greater than that which Southern Region was willing to support access rights to (i.e. PCD December 2022).

Notably, in the case of Glynde Reach Viaduct on Southern Region, the relevant RT3973 HAW dispensation is only for 6 months at a time due to the particularly poor condition of the structure.

At the current time, Anglia Route is considering whether it might also be able to adopt the proposed revision to the RA10 term – this is a matter that has not concluded.

### **RA obligations and HAW provision**

HAW freight services are those which operate in exceedance of the published RA of the network – they are permitted on the network at the discretion of Network Rail's Route Asset Managers (RAMs), through a dispensation process. Freightliner's Section 22a application clearly acknowledges this dispensation process, as such they are aware that there is inherent commercial risk in committing to operate traffic which exceeds published RA levels.

Network Rail is obligated to maintain the RA of the UK rail network to the levels published for individual routes in the Sectional Appendix, which is most commonly RA8 (i.e. less than RA10). Network Rail has no obligations to provide RA in exceedance of that which is published in the Sectional Appendix, nor are we funded to do so.

The historical design of many of the network's assets has in the past meant that they can safely accommodate RAs in excess of those published in the Sectional Appendix, however, as those assets degrade with the passage of time, the "nice-to-have" headroom above published RA levels has reduced and continues to reduce.

Network Rail has consistently sold access rights for HAW traffic to Freight Operating Companies (FOCs) in past years, however our ability to support these services or their access rights is now diminishing on some Regions/Routes due to reducing asset capability.

### **Improved assurance of HAW access right sales**

Within its Section 22a application, Freightliner remarked that Network Rail had changed its stance towards HAW traffic. In September 2020, Network Rail *did* introduce processes to improve the assurance of HAW access rights within the company. This was explained to the Office of Rail and Road (ORR) by our former Freight & National Passenger Operators (FNPO) function in its regular bilateral meeting on 22 September 2020.

Specifically, a joint working group of Network Rail RAMs for Track, Structures and Earthworks requested that their explicit approval be gained for any sales of access rights which would permit freight services to operate in exceedance of the RA published for the route of travel in the Sectional Appendix. The implication here was that this had not always been happening to the required level, resulting in some HAW constraints not being sufficiently reported and considered in the Sale of Access Rights process. In response, the then-FNPO function instigated a process to explicitly consult with these parties on all affected Routes when taking forward freight access rights proposals. It is this new process which has flagged the 14 HAW RA10 access rights which Network Rail can only agree a limited period of sale.

The new step of explicitly consulting affected RAMs for Track, Structures and Earthworks is intended to establish those sections of network infrastructure where it would present unreasonable risk that the HAW access right (freight service) could not be successfully supported by the Route for the period sought.

Freightliner has correctly observed that there are multiple existing train slots with HAW access rights, held by themselves and others, over the network infrastructure where Network Rail is now citing HAW constraints. In most cases these HAW access rights have been agreed up to PCD December 2026 and, in Freightliner's case, have been agreed as recently as their 8th Supplemental Agreement. In all cases, these HAW access rights have been sold prior to the introduction of our new assurance process.

The new assurance process has now flagged, and will continue to flag, areas where the provision of HAW capability cannot be guaranteed and is in doubt. In these instances and irrespective of previous access rights sold, it would be irresponsible and unproductive for Network Rail to continue to agree RA10 access rights. Network Rail does not wish to knowingly compound matters and increase risk – both for ourselves and for our customers – by agreeing further HAW access rights which may not be deliverable for the entire term sought by the FOC.

### **HAW constraints on Southern Region and Anglia Route**

Within Appendix 1 of its Section 22a application, Freightliner supplied to ORR the specific details of the structures on Southern Region and Anglia Route which limit the duration for which some HAW access rights can be sold. Network Rail can confirm that it has not been possible for our Southern Region and Anglia Route to fully support the sale of the HAW access rights featured in Figure 7 – this is due to the declining condition of certain bridges.

Our Southern Region (Wessex, Sussex and Kent Routes) is not able to support the sale of RA10 access rights due specifically to the condition of its metallic underline bridge portfolio. The Southern Region will endeavour to maintain HAW dispensations for RA10 traffic for as long as possible, however funding levels are insufficient to maintain the steady state of the asset stock. As such, the Region is effectively managing the decline of the “nice-to-have” headroom of its metallic bridge assets above published RA levels, meaning the Region is unable to commit to any medium-to-long term horizon for HAW access rights.

The Southern Region network will – without intervention – see a loss in capability of underline bridge stock and already a number of traffic restrictions are being applied due to the poor condition of metallic underbridges.



Similarly, our Anglia Route have also cited specific structures over which they do not support the further sale of HAW freight access rights, though their concerns are currently limited to four specific structures/locations (this was previously seven at the time of Freightliner lodging its Section 22a application).

### **In focus: Southern Region**

In very round figures, it would require £140m per Control Period to maintain the steady state of Southern Region's metallic underline bridge stock, undertake relevant renewals at a sustainable level and catch up on the backlog of maintenance created over several decades. It should be noted, however, that this figure assumes a bridge renewal rate based on an increased 120-year life expectancy per bridge where the average existing age of the stock is 60 years – in reality, the average age of the stock is far greater.

In the case of Kent and Sussex Routes, there are 787 metallic underbridges/intersection/viaducts which represents 50 % of the underline bridge stock on these routes. 521 of these structures are on Kent. These vary from short 2-metre span subways to large multi-span structures and 56 % of bridges date from 1859 to 1910.

Kent and Sussex's structures have suffered from a lack of investment and maintenance over decades – notably there was a moratorium on domestic bridge renewals on Southern Region from 1982 up to 1994. The bridge stock has not been painted regularly since the 1960s, when cyclical painting (as still undertaken by London Underground) was abandoned.

With average normal corrosion levels of 60 to 120 microns per annum, 9mm/12mm thick web plates on metallic bridges are vulnerable to corrosion from both sides and are being severely corroded, with holed webs in main girders becoming ever more common. These significant defects are resulting in a loss of functionality.

In Kent and Sussex, preventative/replacement interventions on underline bridge stock was applied to 11,500 m<sup>2</sup> of metallic bridge infrastructure in Control Period 5, which is approximately a third of that required to maintain the infrastructure at a steady state. The two Routes combined have circa 174,000 m<sup>2</sup> of metallic underbridge and, assuming a repainting cycle of 25 years, this means to achieve steady state and avoid degradation, a preventative volume of circa 35,000 m<sup>2</sup> per control period is required.

Maintaining the steady state of metallic bridges on Kent and Sussex equates to 157 metallic underbridges being refurbished per Control Period (based upon a 25-year cycle). In Control Period 5, Kent and Sussex Routes painted and renewed 42 metallic underbridges, with 103 planned in Control Period 6.

The Control Period 6 plan for the painting of metallic underbridges (both preventative and renewal volume) is 17,140 m<sup>2</sup>, which equates to painting underline bridges every 51 years, which is far below the aforementioned 25 years. Many of these structures will not have been painted for a considerable time so many will continue to deteriorate without intervention in the medium term leading to a continuing loss of functionality. A number of structures will be beyond economic repair by the time refurbishment is programmed.

Just two underline bridges were replaced in Kent in Control Period 5 out of the population of 521, which equates to renewing bridges every 1,300 years – this was particularly bad due to delivery issues in Kent. Five metallic underline bridges were replaced in Sussex out of 266 in the same period – making the renewal cycle 226 years. 12 renewals are planned in Kent in Control Period 6 (a renewal rate of every 217 years), with 14 renewals planned in Sussex (a renewal rate of every 95 years).

It is against this general backdrop, and the inability to maintain the steady state of the infrastructure, that HAW access rights on Southern Region are now no longer supported for a period beyond 2 years. This 2-year period aligns with the usual period of access permitted by our RT3973 HAW dispensations.

*To note:* The access right for 6V00 (MTWO) Acton TC – Newhaven Days Aggs (see Figure 7) cannot be agreed for a term any longer than 6 months, which Network Rail fully understands offers little practical utility to Freightliner. This situation owes to the particularly poor condition of Glynde Reach Viaduct at 52 miles 20 chains on STS (Line of Route SO260). The 6-month period aligns with the current period of access permitted by the relevant RT3973 HAW dispensation.

## In focus: Anglia Route

Anglia Route has in recent months contested the sale of HAW access rights affecting the following seven structures/Engineering Line References (ELRs) – though this number has now reduced to four due to the fulfilment of bridge renewals over the Christmas 2020 period:

- Tottenham & Hampstead (TAH1 and TAH2)
- BGK/1569 – ‘Great Ouse, Cutter Bridge’ @ 70m 0924yds
- EMP/1812, 1813 – ‘Manea Viaduct’ @ 77m 1694yds
- CAW/6 ‘Over MCJ1 & L.T. Intersection Bridge’ @ 6m 1397yds
- CRC1/1 – ‘Chalk Farm Road’ @ 5m 0550yds – **bridge now remediated**
- BOK1/72 – ‘Camden Road A503 Under No1 Lines’ @ 4m 1672yds – **bridge now remediated**
- NOL/1222 – ‘Postwick Bridge’ @ 3m 0880yds – **bridge now remediated**

Only two ELRs from above (TAH and CAW) are relevant to the Freightliner 10th Supplemental Agreement but, for completeness, Anglia Route’s HAW constraints exist on the following ELRs for the following reasons:

- *Tottenham & Hampstead (TAH1 and TAH2)*

The TAH features 22 sub-standard underbridges, of which 21 are located on TAH2 (South Tottenham to Woodgrange Park Jn) and one is located on TAH1 (Junction Road Jn to South Tottenham). The structures are currently inadequate for the RA of the line (RA8) and are further overstressed by HAW traffic. 3 of the 22 assets have been declared to the ORR as Discrepancy bridges in the 2019-20 Annual Return.

These issues are a consequence of historic under investment and a large number of structures in poor condition, all reaching end of life at the same time. Our plans to remediate the structures are currently distributed throughout CP6, CP7 and CP8.

- *BGK – Bridge 1569 – ‘Great Ouse, Cutter Bridge’ @ 70m 0924yds*

BGK/1569 ‘Cutter Bridge’ and to a lesser extent its neighbour BGK/1572 – ‘Common Muckhill’ are sub-standard assets which together are responsible for a 20mph speed restriction which has been in place on the West Anglia Main Line through Ely since the 1980s.

Assessment options at BGK/1569 have been exhausted. ‘Level 2’ assessments from two separate consultants have independently concluded that the safe load capacity of the bridge is significantly below the loading currently applied to it. The structure has been declared to the ORR as a Discrepancy asset in the 2019-20 Annual Return.

Options for reconstruction of the bridge (required to achieve HAW RA10 capability) are under investigation by the Ely Area Capacity Enhancement project with an estimated completion date of around 2030.

Renewals budget has been allocated by the Route Engineer (Structures) in Control Period 6 Year 5 to carry out strengthening, purely as a holding measure.

- *EMP – Bridges 1812 & 1813 – ‘Manea Viaduct’ @ 77m 1694yds*

Bridges EMP/1812 & 1813, collectively known as Manea Bridges, are large metallic bridge structures located in the Ouse Washes and pose significant problems for long term maintenance. The structures’ sizes and difficult access (due to their location in the middle of a flood plain), along with numerous environmental designations and constraints, add to the difficulty of frequent maintenance and minor work interventions.

Recent examinations have determined that both structures are in poor condition with severe corrosion in the metallic parts and defects in the masonry substructure. Both are subsequently on additional examination regimes to manage the risks.

Maintenance works are planned to rectify the above defects in Control Period 6, however the asset continues

to degrade and must be reconstructed to meet the capability and reliability requirements of the railway. The cost of reconstruction is estimated to be circa £35m which cannot be delivered within the constraints of the current budget.

- *CAW – Bridge 6 – Cricklewood to Acton Wells @ 6m 1397yds*

Underbridge CAW/6 over MCJ1 & L.T. Intersection Bridge @ 6m 1397yds is a sub-standard asset (capacity RA0, category F overstress) in very poor condition. It has been declared to ORR as a Discrepancy asset in the 2019-20 Annual Return.

Anglia Route plan to replace the sub-standard bridge deck in 2021-22.

This structure is located on an intersection of the Cricklewood and Acton Wells line (NR), the Metropolitan and Jubilee lines (LUL) and the Marylebone and Harrow-on-the-Hill line (NR). This makes negotiating the required access unusually complicated, requiring agreement with operators working on all four lines. Negotiations for 2021-22 are in progress but not yet agreed.

### **Freightliner's concerns about Southern Region and Anglia Route HAW constraints**

#### Tottenham & Hampstead (TAH) on Anglia Route

Freightliner asserts that the contested HAW access rights traversing the TAH section (on Anglia Route) do not contain any contractual routing information relating to the TAH lines between South Tottenham and Woodgrange Park, and that alternative routing between these locations is available should this be required.

For clarity, when reviewing access right proposals, Network Rail's internal Sale of Access Rights process demands evidence that suitable capacity exists for the sale of any proposed access right. Therefore, when considering HAW constraints, it is the most reasonable course of action to consider that the access right can only be supported where sufficient capacity has already been established, and not where it *might* be possible to establish it.

In its application Freightliner wishes to obtain HAW access rights for train slots they have established via the TAH section only (and not another route), therefore Network Rail has reasonably evaluated that that is the established route of the train and must be the basis on which we sensibly evaluate the risk posed by the proposed access rights.

#### BOK1 – Bridge 72 – 'Camden Road A503 Under No1 Lines' @ 4m 1672yds on Anglia Route

Freightliner contested Network Rail's position not to support HAW access rights over the above structure, citing impending bridge repair work which would alleviate Network Rail of its HAW constraints. Bridge 72 on BOK1 has been remediated over the Christmas 2020 period and is no longer a constraint to the sale of HAW access rights. This has enabled Network Rail to now support the sale of a RA10 access right for 6L46 (SX) Acton – Bow Depot FLHH up to PCD December 2026.

#### Kent and Sussex

Freightliner contested that the lists of poor condition metallic bridges preventing the sale of HAW access rights on Kent and Sussex Routes included structures that have been renewed within the last three years, such as Bellenden Road and the intersection bridges on the CAT lines. Network Rail has reviewed the matter and considers that Freightliner is confusing the recent renewal of CAT 476 intersection bridge (which was reconstructed in August 2020 and does not feature in our listed HAW constraints on Southern Region) with intersection bridge no. 495 on the NTL section of infrastructure.

Similarly, at Bellenden Road, the deck carrying the Portsmouth lines (BTH1) was reconstructed recently but not the deck carrying the Up and Down Catford loop lines. To be clear, Bridge 1188A (Bellenden Road) has not been reconstructed recently and is a rivetted metallic underline bridge.

Freightliner asserts that Network Rail's "*failure to point to any specific infrastructure that cannot support RA10*

beyond PCD 2022 leads Freightliner to believe that this is a general concern and continuing the ongoing maintenance and replacement program is sufficient to permit granting of these rights for the requested duration.” As the network’s infrastructure manager, Network Rail is obviously best placed to comment on the condition and capability of its assets and our representations within the previous ***In focus: Southern Region*** section clearly demonstrate the context behind why we cannot continue selling long-term HAW access rights on Southern Region.

Additionally, our enclosed appendices (B to E) cite the relevant metallic underbridges on Southern Region that are of concern and which prevent the sale of those HAW access rights sought by Freightliner. There are other metallic underbridges on Southern Region that are of concern but our representations only detail those relevant to the access rights in question.

#### Funding to date for metallic structures on Southern Region

Freightliner’s Section 22a application has raised queries about the funding settlement that Network Rail received in Periodic Review 2018, which Freightliner allude to as being of sufficient size to improve asset sustainability given the inclusion of an additional £1bn specifically for this purpose. Freightliner also contend that Southern Region (which includes all of former South East Route) was, in its previous South East Strategic Route Plan, *“pleased that asset sustainability has been recognised in the Final Determination and that we have received an additional £66m to address the long term decline of our track and metallic structures”*. Freightliner noted that the same Strategic Route Plan commented that *“network capability will be maintained (with the exception of short term restrictions)”*.

Whilst Southern Region will endeavour to maintain HAW dispensations for RA10 traffic for as long as possible, funding levels are insufficient to maintain the steady state of the asset stock. Over time, the Southern Region network will – without further intervention/funding – see a loss in capability of underline bridge stock which will affect HAW freight services first and already a number of traffic restrictions are being applied due to the poor condition of metallic underbridges.

The Control Period 6 Final Determination did not provide the required level of funding to resolve Southern Region’s ability to support RA10 traffic long term and, for clarity, any comment by the South East Strategic Route Plan regarding the ability to maintain network capability was only in regard to published RA levels in the Sectional Appendix.

Network Rail’s previous Control Period submissions have sought funding to deliver the capability required of the infrastructure by our Network Licence and to address any related health and safety matters. Internally, items of this nature are categorised as being ‘Level 1’ must-haves by Network Rail RAMs. These items represent the minimum levels of activity required to manage and maintain structures safety through the Control Period. Level 1 activities are often described as our ‘basic safety limit’.

Our Network Licence does not demand the delivery of HAW capability and this is usually categorised as a ‘Level 2’ nice-to-have by our RAMs. Level 2 items tend to represent discretionary activities to continue the reduction in safety risk and to target a reduction in performance risk.

The scale of ‘Level 1’ requirements are normally such that no provision can reasonably be afforded to HAW capability in response to the setting of Control Period funding.

Freightliner commented in its Section 22a application that targeted funding for asset sustainability was over and above the track access charges paid by HAW freight services – it is unclear from their representations whether Freightliner is making the argument that track access charges should cover the cost that HAW freight services cause to the network.

For clarity, Freight Variable Usage Charges are applied to freight traffic to recoup those additional costs incurred directly from freight wear and tear of the network – the charges address the additional fatigue of the infrastructure by freight. Freight Variable Usage Charges do not address those fixed costs relating to the capability of the network in the first place – the charges do not provide Network Rail with the funds to enhance, or defer reductions in, the ‘nice to have’ headroom of asset capability above published RA levels. Notably, freight services do not incur any fixed asset charges.

## **Great Eastern Mainline (GEML) Rights**

Network Rail initially did not support the award of additional firm rights on the Great Eastern Mainline (GEML) due to a Programme Management Office (PMO) backed workstream being underway which aimed to identify future off peak timetabling options on the GEML that would deliver against all Network users future aspirations and requirements whilst actively managing capacity limitations and congestion risk. Specifically, this was looking to balance the GA franchise aspirations, Greater freight tonnages and the MTR Elizabeth Line timetable.

During the course of this workstream there have been significant changes to the Network and expectations of future usage requirements brought about by COVID as well as, following industry consultation, a limit on major timetable change nationally during 2021 to enable industry flexibility.

This is something the ORR have acknowledged in their decision letter date February 10th to the Grand Union Train Section 17 application for the proposal of additional flows between Wales and London. The decision letter states “There is a high degree of uncertainty over future rail demand following the shift towards home working that has taken place as the result of COVID. Based on recent surveys, we expect there to be a material and permanent reduction in the number of short to medium distance commuting journeys by rail. However, it is too early to say anything definite about the scale of that reduction. It is unclear whether there will be a lasting effect of the pandemic on business, leisure, education or longer distance commuting journeys by rail.”

As such there is a material risk that the assumptions that were put in place to produce the original timetable options are no longer fit for purpose. This has subsequently required us to reconsider the desired outputs of future modelling of the GEML. Following discussions and verbal agreement from all stakeholders, including the Industry PMO steering group, Anglia Route has begun the process of setting up an Event Steering Group (ESG) with representatives from all parties to work towards a revised programme that will see timetable change delivered for PCD December 2022. Network Rail will be providing more detail and seeking the input of ORR and DfT at our next trilateral Monday 8<sup>th</sup> March.

Notwithstanding the above, we recognize our obligations to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance and as a result have considered the rights contested by Freightliner within the Section 22A on their own merit. The resultant outcome of this is provided in below in figure 8.

**Figure 8: Network Rail Position on Contested GEML Rights**

Train Reporting Number	Days Per Week	Origin	Destination	Support Decision
6L46	SX	ACTON TC	BOW DEPOT FLHH	Supported
6V53	MX	BOW DEPOT FLHH	ACTON TC	Supported
6V53	SX	HITCHIN ENGINEERS SIDINGS FHH	MEREHEAD QUARRY (FHH)	Not supported due to performance concern
6V12	SX	CHELMSFORD RECEPTION	ACTON TC	Not supported due to performance concern

The two rights not supported due to performance concerns are included within figure 3 of the performance section of this response and will as with the other rights within figure 3 be captured within the performance improvement milestone plan articulated within Appendix A.

## **Other rights**

Freightliner have included 7C59 (FO) Merehead Quarry to Westbury Down TC within their submission. It is our view this right has been contractualised within the 9<sup>th</sup> SA submitted to the ORR and thus no further position is provided on this given we are in agreement with Freightliner on this right.

## **Summary of Rights Position**

Appendix F is the contested rights table in full, with information only columns added to provide a summary of our position on all 54 rights submitted by Freightliner within their section 22a. Whilst Appendix F provides our summary position in full, the below figure 9 outlines the six rights that Network Rail are in agreement with and as such are supportive of being contractualised through to PCD December 2026 as per Freightliner's submission request. We continue to work with Freightliner and Mendip Rail Ltd on 38 rights as outlined in the performance section of this response and Appendix A. Further we have provided the terms by which Network Rail will support contested heavy axle weight rights as outlined in the Route Availability constraints section of this response.

**Figure 9: Rights that Network Rail Support Contractualisation**

Train Reporting Number	Days Per Week	Origin	Destination
6F54	SO	CLIFFE HILL STUD FARM TARMAC FHH	HUMBERSTONE ROAD
6V34	SX	DAGENHAM DOCK ARC	ACTON TC
6B25	SX	WEST DRAYTON HANSON AGGS (FLHH)	STOKE GIFFORD FLHH
7035	SX	WESTBURY DOWN TC	FAREHAM ARC SOGS
6L46	SX	ACTON TC	BOW DEPOT BLHH
6V53	MX	BOW DEPOT FLHH	ACTON TC

Yours sincerely



Simon Bennett  
Customer Relationship Executive, Network Rail

CC:

Steve Jones, ORR  
Andy Saunders, Network Rail  
Nick Coles, Network Rail