



Response to Consultation on core elements of the regulatory framework to support capacity expansion at Heathrow - CAP1658

Submission by Heathrow Southern Railway Ltd.

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1.0 Introduction

- 1.1 This response is submitted by Heathrow Southern Railway Ltd. (HSRL), the company promoting a privately financed scheme to provide new rail access to Heathrow from the south. A brief description of the scheme was included in our earlier response, dated 22nd September 2017, to the CAA's previous consultation on core elements of the regulatory framework to support capacity expansion at Heathrow (CAP1541).
- 1.2 Subsequently, there has been significant progress with plans for Heathrow expansion.
- 1.3 Heathrow Airport Ltd. (HAL) have carried out a non-statutory public consultation on their emerging plans for Heathrow expansion. This maintains HAL's policy position, that *"Heathrow's analysis to date indicates that our proposed surface access strategy is not reliant on a Southern Rail Link to deliver the mode share targets in the revised draft ANPS and commitment to no increase in Heathrow-related traffic."*¹
- 1.4 However, it also confirms that HAL *"support development of a new Southern Rail Link to Heathrow."* More specifically, the consultation effectively endorses the specific objectives for our HSR scheme, recognising that *"a new direct service could be introduced to London Waterloo and destinations in Surrey and Hampshire from Heathrow" has the "potential for wider benefits by offering the opportunity to travel through Heathrow. This would create new connections into London as well as Old Oak Common. This could help to relieve Waterloo, which is currently the busiest London terminus as well as the wider London rail network by giving an alternative route to HS2 services via Old Oak Common."*²
- 1.5 Transport for London has concluded that both Southern and Western rail access schemes are essential to Heathrow expansion.³

¹ Para. 6.2.11, Our approach to developing a surface access strategy, HAL, January 2018

² Paras. 6.2.9 and 6.2.12, *ibid*

³ *"If an expanded Heathrow is to achieve no increase in highway traffic, TfL's assessment is that it will potentially require over £10bn investment in transport infrastructure, including Western Rail Access and Southern Rail Access, as well as HAL introducing a road user access charge"* – Mayor of London briefing, House of Commons vote on Airports NPS, 25th June 2018

- 1.6 The Transport Select Committee’s report on the draft Airports NPS concluded *“schemes such as Southern and Western Rail Access are essential for a two-runway Heathrow, never mind a three runway Heathrow with 50% more capacity”*⁴
- 1.7 Government’s response to the Committee’s report confirms *“the Government supports both Western Rail Link and Southern Rail Access to Heathrow Airport. These are both major transport projects in their own right and will need to follow their own statutory planning processes before they can proceed.”* It further states *“the Airports NPS places responsibility for developing and implementing an effective surface access plan firmly on the applicant. This is crucial to ensuring holistic and joined up delivery of airport expansion.”*⁵
- 1.8 The Airports NPS has now been designated and includes the key condition that any application for development consent must include details of how the applicant will *“increase the proportion of journeys made by public transport to achieve a public transport mode share of at least 50% by 2030 and at least 55% by 2040”* and *“achieve a 25% reduction of all staff car trips by 2030, and a reduction of 50% by 2040.”*⁶
- 1.9 The NPS confirms HAL, as the airport scheme promoters, *“have pledged to meet the cost of surface access schemes required to enable a runway to open”* and *“would make a contribution towards the cost of the proposed Western Rail Access and Southern Rail Access schemes. The majority of the surface access costs where a split of beneficiaries is expected (for example, where multiple businesses and the public at large benefit from a new road junction or rail scheme) are likely to be borne by Government, where the schemes provide greater benefits for non-airport users. The airport contribution would be subject to a negotiation, and review by regulators.”*⁷
- 1.10 The NPS notes *“any Southern Rail Access to Heathrow is at an earlier stage of development and, subject to an acceptable business case and obtaining planning consent, should commence operations as soon as reasonably practicable after a new runway has opened.”*⁸
- 1.11 While it is HAL’s responsibility, as the scheme promoter for airport expansion, to bring forward a surface access strategy capable of satisfying the NPS’s mode share conditions, the NPS clearly expects and assumes that the airport will be required to make *“a contribution towards the cost of the proposed Western Rail Access and Southern Rail Access schemes”* and that Southern Rail Access *“should commence operations as soon as reasonably practicable after a new runway has opened.”*
- 1.12 Subsequently, the Relationship Framework Document between the Secretary of State for Transport and HAL confirms *“the amount of any contribution for surface access schemes that can be included in Heathrow’s Regulated Asset Base (RAB) is subject to the approval of the CAA given in accordance with its policies. Heathrow is proceeding on the assumption that its funding of, or contributions to, surface access schemes ... will be approved for inclusion in the RAB.”*⁹

⁴ Para. 43, Transport Committee Report on Airports National Policy Statement, March 2018

⁵ Paras. 5.6 & 5.10, Government response to the consultations on the Airports National Policy Statement, DfT June 2018

⁶ Para. 5.17, Airports NPS, June 2018

⁷ Paras. 3.38 & 3.39, *ibid*

⁸ Para. 5.7, *ibid*

⁹ Para. 6.2, Relationship Framework Document between the Secretary of State for Transport and Heathrow Airport Ltd, June 2018

- 1.13 Separate to the issue of airport capacity expansion, Government has committed to taking forward schemes for both Western and Southern rail access to Heathrow. The former - Western Rail Link to Heathrow (WRLtH) - is intended to be developed and financed, at least in part, as a conventional PPP, while the Secretary of State has confirmed that the latter - Southern Rail Link to Heathrow (SRLtH) - will be a *“pathfinder”* scheme.¹⁰
- 1.14 This is explained in the DfT’s subsequent Market Sounding Briefing as *“a pathfinder project for involving the private sector earlier in the development process and could pave the way for taking a similar approach on other future projects, broadening sources of funding and supporting innovation and growth.”*¹¹
- 1.15 The Briefing document emphasises that the scheme’s objectives are not limited to Heathrow rail access but should include wider connectivity and benefits, for example providing *“attractive outer orbital connectivity around the capital”* and *“relieving congestion at London Paddington and Waterloo.”*¹²
- 1.16 These objectives, as also stated in DfT’s associated PIN Notice,¹³ confirm that Government’s objectives for SRLtH are the same as HAL’s Southern rail access in its public consultation – *“serving Waterloo and Surrey/Hampshire from Heathrow”* and *“relieving congestion at London Paddington and Waterloo.”*
- 1.17 There is therefore clear and welcome policy alignment that a SRLtH scheme should not simply serve Heathrow but should deliver wider benefits to non-airport passengers.
- 1.18 This precisely describes our Heathrow Southern Railway (HSR) scheme which, as well as linking Heathrow to Waterloo and Clapham Junction - and therefore opening up access to the airport from Kent and Sussex - allows new, direct rail services between Hampshire/Surrey to Old Oak Common (for HS2 interchange) and London Paddington (for Elizabeth Line services) via Heathrow.
- 1.19 HSR provides through running of rail services via Heathrow and therefore links the South Western and Great Western rail networks, making use of spare capacity on the former and the existing Heathrow Express paths on the latter. In this way, HSR meets the Government’s and HAL’s strategic objectives, and enables service patterns, frequencies, and journey times that are attractive to both airport and non-airport users.
- 1.20 We are pleased that the CAA’s advice to the Secretary of State therefore specifically recognises that *“schemes should be designed to deliver wider economic benefits, e.g.: by supporting services running through the airport”*¹⁴
- 1.21 Serving multiple markets in this way increases demand and farebox revenues (while also making best use of scarce network capacity) and therefore minimises the financial contribution required from the

¹⁰ *“New Heathrow rail link to lead the way for future transport funding schemes,”* DfT News Story 20th March 2018

¹¹ Page 5, Southern Rail Link to Heathrow, Market Sounding Briefing, DfT May 2018

¹² Page 6, *ibid*

¹³ *“SRLtH forms part of the government’s long term aspiration for the railway network”* - Prior Information Notice, DfT 4th May 2018 <http://ted.europa.eu/TED/notice/udl?uri=TED:NOTICE:196670-2018:TEXT:EN:HTML>

¹⁴ Page 23, Provisional assessment of airport-airline engagement on new runway capacity at Heathrow Airport, Advice to the Secretary of State, CAA February 2018

airport. This in turn allows HSR to be privately financed, meeting Government's objective that SRLtH should be a "pathfinder" scheme for private delivery of major rail enhancements.

- 1.22 We see this as critical to ensuring Heathrow expansion remains affordable. Airlines have made clear that the cost of expansion should not result in a material increase in airport charges if Heathrow is to remain internationally competitive.
- 1.23 The CAA confirms it supports "the ambition set out by the Secretary of State in 2016, of keeping charges close to current levels in real terms"¹⁵ while recognizing the need to balance other issues, including what are seen as "substantial costs for consumers associated with significant delays to capacity expansion."¹⁶
- 1.24 However, the Airports Commission's capital cost estimate for the NWR scheme made no allowance for surface access. While we understand HAL have now reduced the estimated cost, we believe this similarly excludes any contribution to surface access generally, including rail enhancements and on-airport station works.
- 1.25 The cost of Heathrow expansion, even without considering contributions to surface access, presents challenges to affordability and financeability. HAL specifically assume, and Government has accepted, that the airports' financial contributions to surface access schemes must not make expansion unaffordable.¹⁷
- 1.26 Rail schemes which provide benefits only to airport passengers will inevitably result in the airport bearing much of the cost. Even if Government were to decide that a public funding contribution could be justified in, for example, helping to meet Heathrow's public transport mode share condition, this could be susceptible to a State Aid challenge (as explicitly recognised by DfT and HAL).¹⁸
- 1.27 We therefore believe the CAA's overall approach to the economic regulation of capacity expansion must carefully consider how to maximise the benefits of new rail access at the least possible cost to Heathrow's RAB.
- 1.28 We suggest there is therefore a need for close liaison between CAA, DfT, ORR and promoters of credible surface access schemes to ensure the most efficient and cost-effective solutions are brought forward and considered in an integrated way.
- 1.29 While we support the principle of Western rail access, we are concerned that Network Rail's recent statutory consultation on their proposed Western Rail Link to Heathrow (WRLtH) contained significant omissions and has been developed in isolation from a broader surface access strategy.
- 1.30 For example, the consultation material shows that the proposed infrastructure design made no provision for SRLtH and one option could preclude through running of HSR services via Heathrow. This is because WRLtH assumes services between Reading and London Paddington would run through

¹⁵ Para. 1.17, CAP1658

¹⁶ Para. 1.19, *ibid*

¹⁷ Para. 9.1.1.8, Relationship Framework Document between the Secretary of State for Transport and Heathrow Airport Ltd, June 2018

¹⁸ "The Department's ability to provide funding or contributions (to surface access schemes) is constrained by the laws prohibiting or restricting state aid as well as the Government's aviation policy" - Para. 6.2, *ibid*

Heathrow, taking up both scarce capacity within the airports rail infrastructure and the train paths on the Great Western Main Line that HSR instead requires.¹⁹

- 1.31 WRLtH therefore assumes “*services running through the airport,*” which might be thought consistent with CAA’s policy. However, unlike HSR, there is no conceivable utility or benefit in using valuable rail capacity for services running from Reading to Paddington via Heathrow. No through (non-airport) passengers would accept the much longer journey time to travel between Reading and Paddington via WRLtH and Heathrow, (which we estimate would incur a c.18 minutes penalty) when alternative long distance/semi-fast and Elizabeth Line services run directly via the GWML.
- 1.32 While we accept that there may need to be trade-offs in developing schemes, it would be unfortunate if WRLtH, simply by being perceived to be at a more advanced stage of development, (having been publicly funded to date), resulted in sub-optimal outcomes, and particularly a requirement for a much greater financial contribution from the airport than would otherwise be required for schemes that instead serve both airport and non-airport markets.
- 1.33 Network Rail’s WRLtH consultation made no reference to cost or funding assumptions. However, a Statement of Funding will be required to accompany the application for a Development Consent Order, which is anticipated in June 2019.²⁰
- 1.34 While Western rail access is clearly of strategic importance, HAL,²¹ Heathrow’s airlines²² and the Mayor/TfL²³ estimate much greater demand for airport access from the south rather than the west. It is therefore essential to test schemes in terms of their contribution to modal shift from road to rail, the relationship between costs and benefits, the allocation of benefits between airport and other beneficiaries and therefore the proportion of costs that would be expected to fall to Heathrow’s RAB.
- 1.35 Western and Southern rail access schemes should not therefore be individually considered in isolation but designed and assessed on the basis of demand analysis to determine the optimum service pattern, the infrastructure required to deliver those services and – because Heathrow’s and the wider London and South Eastern rail network is so severely capacity constrained – integration with existing and other proposed services.
- 1.36 We also consider this integrated approach is in any case necessary in order to be consistent with the National Networks NPS, the objective of which is “*to improve the capacity, capability, reliability and resilience of the rail network at key locations for both passenger and freight movements to reflect growth in demand, reduce crowding, improve journey times, maintain or improve operational*

¹⁹ “WRLtH would deliver a new train service from Reading to Heathrow T5, with trains continuing on to the central terminal area and on to London Paddington. The service would provide four trains per hour in each direction”- Factsheet 2: The new rail link and why it is proposed, WRLtH consultation 2018

²⁰ Indicative timetable, Western Rail Link to Heathrow (WRLtH) Market Sounding Briefing Document, DfT, Summer 2018

²¹ Figure 4.4, Response to Airports Commission’s Initial Assessment, HAL 2015

²² “Catchment area data suggested that the Southern Rail Access proposal may have a stronger level of passenger demand compared to the ...Western Access scheme” - LACC, AOC and BAR UK evidence to the Commons Transport Committee Inquiry into Surface Access Strategies for Airports October 2015

²³ “While it (Western Rail Access) will have a small beneficial impact on airport mode share, it is unlikely to have a significant impact. The Southern Rail Access to Heathrow proposal ... could have a much greater impact on improving mode share” - Mayor of London and TfL evidence to the Commons Transport Committee Inquiry into surface transport to airports, October 2015

performance and facilitate modal shift from road to rail."²⁴ Considering schemes in isolation is unlikely to achieve the optimum benefits.

- 1.37 For example, the Airports Commission assessed Western rail access and concluded "*a four train per hour service would have spare capacity with the busiest sections reaching 31% of seat capacity*"²⁵ but "*reducing to as little as 16% of hourly seated capacity (and 6% of hourly total capacity) over the westernmost part of the WRAtH route between Maidenhead and Reading.*"²⁶ This highlights the inherent inefficiencies of rail access schemes serving only airport passengers and demonstrates the need to consider not only capital contributions to rail schemes but also whether Heathrow's RAB might be required to additionally provide ongoing revenue support.
- 1.38 We await clarity from DfT on the next steps beyond the current "*Market Sounding*" exercise with potential SRLtH scheme promoters but understand promoters may be required to submit Outline Strategic Business Cases later in 2018.
- 1.39 We suggest it would be helpful in terms of co-ordinating rail schemes and surface access strategy if the CAA's indicative timescales for regulating airport expansion recognise, and where possible align with, DfT's separate programmes for WRLtH and SRLtH.

2.0 Chapter 3 – Evolutions to the Regulatory Framework

- 2.1 The consultation emphasizes the CAA's aim to promote expansion in a way that is consistent with its statutory duties, by "*incentivising efficient delivery, including by leveraging on the advantages of competitive forces where practicable.*"²⁷
- 2.2 We therefore believe CAA should be closely involved in the development of Heathrow's rail access schemes and HAL's surface access strategy in order to similarly ensure the most efficient and competitive delivery.
- 2.3 In the same way that an integrated approach is required in considering surface access schemes and strategy, we suggest that WRLtH and SRLtH scheme promoters should also be able and encouraged to consider the affordability and financeability of surface access in the context of Heathrow's existing RAB.
- 2.4 We therefore welcome that the CAA expects progress in "*the provision of more granular information on HAL's RAB through visibility as to how the information in HAL's regulatory accounts aligns with the asset value information in its statutory accounts.*"²⁸
- 2.5 We would welcome the opportunity to discuss our emerging proposals for financing HSR with the CAA as the airport's economic regulation framework continues to develop. It is helpful that the consultation confirms the CAA's proposed timetable could be reviewed in order to allow this to be aligned with DfT's SRLtH and WRLtH programmes.²⁹

²⁴ Para. 2.37, National Policy Statement for National Networks, December 2014

²⁵ Para 4.7.8, Appraisal Framework Module 4 – Surface Access: Heathrow Airport North West Runway, Jacobs for Airports Commission November 2014

²⁶ Table 24 CT GG Rail VOC Summary, *ibid*

²⁷ Para. 3.13, CAP1658

²⁸ Para. 3.33, *ibid*

²⁹ Para. 33, *ibid*

2.6 We note a Relationship Framework Document has now been jointly published by HAL and DfT, setting out the relationship between the parties going forward. It includes the statement that *“were any other party to seek development consent to deliver the scheme or part of it, building the requisite surface access infrastructure would require Heathrow’s acquiescence and collaboration where physical interfaces occur or airport operations might be affected.”*³⁰

2.7 We suggest that the CAA consider clarifying that, where surface access schemes are brought forward as part of the DfT’s SRLtH and WRLtH development process, HAL are required to positively assist and enable development of those schemes. This would align with the CAA’s statement that *“in respect of its commercial incentives, HAL should be mindful that, given its market position, and as the holder of a licence under CAA12, it cannot expect to put its own narrower interests ahead of those of consumers.”*³¹

3.0 Chapter 6 - Early Category C costs

3.1 We believe there are benefits in bringing forward WRLtH and SRLtH schemes to align their delivery with airport expansion. Indeed, this, or at least certainty of deliverability, may be a condition of any DCO consent.

3.2 We welcome the CAA’s acceptance of the principle that early Category C costs can be recoverable subject to their being efficiently incurred and in the interests of consumers.³² We suggest that early costs for surface access schemes should be specifically recognized as potentially recoverable, subject to these being determined through a competitive procurement process and consideration of the respective programmes for surface access and airport expansion.

3.3 We also suggest that the CAA acknowledges that surface access schemes found necessary for airport expansion are likely to be brought forward separately from HAL’s DCO, but that these can still be considered within the context of Heathrow’s economic regulation as and to the extent required.

4.0 Chapter 7 – Surface access

4.1 We agree that Heathrow’s contributions to surface access costs should be limited to those essential to the efficient operation of the airport and/or necessary to secure permission for expansion.

4.2 We also note the CAA’s established principle that users of surface access (which we assume to mean rail in the context of this response) should meet their direct costs to the extent practicable.

4.3 However, we are concerned that the consultation could appear to suggest that HAL will be responsible for developing the airport’s overall surface access strategy, with the CAA’s role limited *“to ensure that it meets relevant legal and planning obligations at lowest efficient overall cost”* and to *“reviewing the individual schemes proposed to assess their efficiency and the benefits that accrue respectively to airport users and non-airport users overall.”*³³

³⁰ Para. 2.5.4, Relationship Framework Document, HAL/DfT, June 2018

³¹ Para. 3.29, Economic regulation of capacity expansion at Heathrow: policy update and consultation CAP 1658, CAA April 2018

³² Para. 6.16, CAP1658

³³ Para. 7.17, *ibid*

- 4.4 The consultation also suggests that *“where third party promoters of individual schemes consider that their schemes are particularly significant and have an important role to play in the surface access strategy for expansion, we would urge them to engage not only with HAL, but also with airlines and other stakeholders so that the merits of their schemes can be considered in the context of the overall delivery of capacity expansion.”*³⁴
- 4.5 We suggest this could be amended to recognise that, as noted earlier, the Secretary of State and DfT have now issued policy guidance and are developing a process to bring forward privately developed and financed Western and Southern rail access schemes independent of Heathrow expansion.
- 4.6 In our view, this process should also include CAA and ORR in order to ensure the most efficient outcomes and best meet the overall policy objectives of improving rail access to Heathrow while also benefiting non-airport passengers.
- 4.7 HAL’s ownership of Heathrow’s existing rail infrastructure should also be recognised, requiring proposed rail schemes to be carefully considered in relation to HAL’s existing rail and proposed airport infrastructure.
- 4.8 Both WRLtH and SRLtH will, for example, need to connect with the existing over-run tunnels west of T5, are likely to require bringing into use the passive provision platforms within the T5 station box, integrate with the existing Heathrow rail infrastructure and consider how to maintain T4 access while optimising overall use of limited railway and station capacity. It will also be necessary to consider cost, design and operational responsibilities for ensuring that, for example, vertical circulation, means of escape and fire protection/fire suppression/life safety systems within Heathrow’s rail infrastructure are capable of meeting the additional passengers using new rail services.
- 4.9 There are also inevitable programme and physical interdependencies in the design and construction of rail infrastructure west of T5, where WRLtH and SRLtH works will be constructed below the proposed western apron, with the possible need for intervention/ventilation shafts on the surface.
- 4.10 However, it is important that the process is not airport-centric if it is to meet the CAA’s objective for *“promoters of surface access schemes (in particular public transport schemes) to have a clear incentive to promote use by non-airport users to develop a viable business case for their schemes.”*³⁵
- 4.11 As set out in the introduction, an integrated approach to airport and non-airport users in the design of rail infrastructure and service patterns is the key – and we believe unique - feature of our HSR scheme. Through running services via Heathrow provide multiple benefits to airport and non-airport users, enable the scheme to be privately financed and minimise the airport’s financial contribution. Serving multiple markets also provides the high demand that justifies direct trains at high frequencies, offering competitive journey times to a wide range of destinations. This combination of frequency and speed is critical to maximising modal shift from road to rail.
- 4.12 It is also important that surface access schemes are brought forward through a competitive and transparent process, which we assume is the Secretary of State’s and DfT’s intention. This will allow a comprehensive assessment of costs and benefits, not just those restricted to airport expansion considerations, and which we suggest best meets the CAA’s *“user pays”* principle.

³⁴ Para. 7.27, *ibid*

³⁵ Para. 7.24, CAP1658

- 4.13 We also note that, while Heathrow’s existing assets are within HAL’s private ownership, the proposed rail access schemes largely fall outside the regulated airport site boundary and can therefore be competitively developed and procured far more easily than on-airport infrastructure.
- 4.14 It is therefore important that HAL’s ownership of Heathrow’s existing rail assets does not prevent or restrict the most efficient rail access schemes, delivering the greatest overall benefits and best aligned with the strategic aims set out in the DfT’s Southern Rail Link to Heathrow Market Briefing,³⁶ to:
- *“Encourage modal shift and reduce road congestion;*
 - *Reduce environmental impacts;*
 - *Minimise the impact on current and future passenger and freight journeys;*
 - *Connect communities;*
 - *Boost economic growth and encourage regeneration;*
 - *Enhance our global competitiveness by making Britain a more attractive place to invest;*
 - *Be deliverable; and*
 - *Be affordable and value for money.”*
- 4.15 We welcome the CAA’s recognition that *“HAL should be mindful, given its market position, and as the holder of a licence under CAA12, it cannot expect to put its own narrower interests ahead of those of consumers. Evidence of this would be considered by the CAA, including in guarding against the recovery by HAL of inefficient or inappropriate costs.”*³⁷
- 4.16 We believe this further emphasises the need for the CAA, ORR and DfT to adopt a co-ordinated strategic design and regulatory approach to the WRLtH and SRLtH procurement process and HAL’s emerging surface access strategy.

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³⁶ Page 6, Southern Rail Link to Heathrow: Market Sounding Briefing, DfT, June 2018

³⁷ Para. 3.29, CAP1658