



# MetroWest+

## Portishead Branch Line (MetroWest Phase 1)

TR040011

**Applicant: North Somerset District Council**

**5.2 Environmental Protection Statement of Engagement**

**Infrastructure Planning (Applications: Prescribed Forms and Procedure)**

**Regulations 2009, regulation 5(2)(f)**

**Planning Act 2008**

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## **Purpose of Document**

This document explains how the DCO application engages section 79(1) of the Environmental Protection Act 1990, in relation to statutory nuisance, and how the Applicant proposes to mitigate or limit such nuisance.

North Somerset District Council

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Environmental Protection Statement of Engagement

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## Contents

1	Summary .....	3
2	Introduction.....	3
3	Statement of Engagement.....	4
4	Noise (sections 79(1)(g) and (ga)) .....	6
5	Air Quality including Dust (section 79(1)(d)).....	8
6	Lighting (sections 79(1)(fb) and (fba)) .....	9
7	Conclusions.....	10

## 1 Summary

- 1.1 The Applicant has designed the DCO Scheme in such a way as to reduce and mitigate any significant environmental effects in so far as it is able to and has also included a variety of measures to mitigate any other effects of the DCO Scheme which are not considered to be significant.
- 1.2 The conclusion that the Applicant has drawn from the ES is that, with the implementation of mitigation measures where appropriate (which will be secured by Requirements attached to the DCO), claims for statutory nuisance are unlikely to arise from the DCO Scheme.
- 1.3 Notwithstanding the above conclusion that no claims for statutory nuisance should arise as a result of the DCO Scheme, the draft DCO that accompanies the application (DCO Document Reference 3.1) contains a provision, at Article 45 (Defence to proceedings in respect of statutory nuisance) that would provide a defence to proceedings for statutory nuisance in relation should a such a claim be initiated against the Applicant, Network Rail Infrastructure Limited or their successors as undertakers under the terms of the DCO.
- 1.4 Given the DCO Scheme's status as an NSIP it is appropriate that the DCO Scheme is protected from proceedings under section 79 of the Act and is capable of continued operation.

## 2 Introduction

- 2.1 North Somerset District Council (the **Applicant**) is making an application for a development consent order (**DCO**) to construct the Portishead Branch Line under the Planning Act 2008. The scheme will provide an hourly (or hourly plus) railway service between Portishead and Bristol Temple Meads, with stops at Portishead, Pill, Parson Street and Bedminster and is known as the Portishead Branch Line (MetroWest Phase 1) DCO Scheme (**DCO Scheme**).
- 2.2 The DCO Scheme comprises the nationally significant infrastructure project (**NSIP**) as defined by the Planning Act 2008 to construct a new railway 5.633 km long between Portishead and the village of Pill, and associated works including a new station and car park at Portishead, a refurbished station and new car park at Pill and various works along the existing operational railway line between Pill and Ashton Junction. Ashton Junction is located close to the railway junction with the Bristol to Exeter Mainline at Parson Street.<sup>1</sup> The DCO Scheme will join the existing railway at Pill Junction on the east side of Pill.

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<sup>1</sup> Please refer to Schedule 1 of the draft DCO (DCO Document Reference 3.1) for more detail.

- 2.3 The Environmental Statement (**ES**) (Part 6 of the Application) which has been prepared by the Applicant as part of the process of environmental impact assessment for the Application has analysed the potential significant effects of a number of elements specified in section 79(1) of the Environmental Protection Act 1990 (the **Act**).

### **3 Statement of Engagement**

- 3.1 This Statement of Engagement has been prepared in accordance with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (the **APFP Regulations**) which requires the applicant for a DCO to provide a statement as to whether the application engages section 79(1) (Statutory nuisances and inspections thereof) of the Environmental Protection Act 1990 (the **Act**). If so, the applicant is required to indicate how it proposes to mitigate or limit such nuisances.

- 3.2 Section 79(1) of the Act in respect of statutory nuisances states:

*"Subject to subsections (1A) to (6A) below, the following matters constitute "statutory nuisances" for the purposes of this Part, that is to say—*

- (a) any premises in such a state as to be prejudicial to health or a nuisance;*
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;*
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;*
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;*
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;*
- (ee) any water covering land or land covered with water which is in such a state as to be prejudicial to health or a nuisance;*
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;*
- (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;*
- (faa) any insects emanating from premises and being prejudicial to health or a nuisance;*

- (fb) *artificial light emitted from premises so as to be prejudicial to health or a nuisance;*
- (fba) *artificial light emitted from –*
  - (i) *premises;*
  - (ii) *any stationary object,**so as to be prejudicial to health or a nuisance;*
- (g) *noise emitted from premises so as to be prejudicial to health or a nuisance;*
- (ga) *noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street; and*
- (h) *any other matter declared by any enactment to be a statutory nuisance;*

*and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 of the Act or sections 80 and 80A of the Act and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint."*

3.3 For the purposes of the above "noise" includes vibration. We note that the following exclusions apply to the above list:

- 3.3.1 Sections 79(1)(b) and (d) do not apply to smoke emitted from a railway locomotive steam engine;
- 3.3.2 Section 79(1)(c) only applies to private dwellings;
- 3.3.3 Section 79(1)(fb) does not apply to artificial light emitted from railway premises<sup>2</sup>; and

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<sup>2</sup> Provided such railway premises are not "relevant separate railway premises". Relevant separate railway premises are defined in section 79(7A) of the Act as railway premises that are situated within premises used as a museum or other place of cultural, scientific or historical interest or premises used for the purposes of a funfair or other entertainment, recreation or amusement, and they are not associated with any other railway premises.

- 3.3.4 Section 79(1)(ga) does not apply to traffic noise.
- 3.4 This Statement considers the possibility for the DCO Scheme to give rise to complaints from receptors in relation to the following areas covered by section 79(1) of the Act:
- 3.4.1 sub-paragraphs (g) and (ga) in relation to noise;
  - 3.4.2 sub-paragraph (d) in relation to air quality including dust; and
  - 3.4.3 sub-paragraphs (fb) and (fba) in relation to lighting.
- 3.5 Whilst the conclusions of the ES suggest that no such nuisance will occur, the Applicant has included within the draft DCO at Article 45 (Defence to proceedings in respect of statutory nuisance) a provision which would protect the Applicant or its successors as undertakers operating the DCO Scheme from any proceedings for statutory nuisance in relation to noise.

#### **4 Noise (sections 79(1)(g) and (ga))**

##### *Construction*

- 4.1 During the construction phase it is likely that there will be construction noise from works at the following locations:
- 4.1.1 Portishead - the construction of the railway line, two car parks, new station, Trinity Primary School Bridge, road realignment and construction compounds (located in the sites designated for the two car parks);
  - 4.1.2 Portishead to Portbury Junction, Pill – the construction of the railway line including off-line haul route between the A369 Portbury Hundred and the outskirts of Portishead and compounds at Sheepway, Portbury Hundred and Lodway Farm;
  - 4.1.3 Pill - Avon Road bridge and earthworks at Avon Road embankment, new permanent bridleway and temporary cyclepath relocation, construction compound at site of the new car park and maintenance compound construction with road-rail access point and principle supply point building, station construction – new forecourt and station entrance (including the demolition of the Station House), new station building, Hardwick cutting stabilisation, ramp / staircase from the entrance to the platform, new station platform and attachments (lighting, shelter), emergency refuge area, minor works to the northern platform (removal of coping, signals, and bat mitigation) – railway line construction works, Pill Viaduct repair works, Mount Pleasant Embankment stabilisation, and Pill Junction; and

4.1.4 Pill to Ashton Junction, including through the Avon Gorge - works to the existing railway line and fencing, a temporary construction compound and maintenance access point at the Pill Tunnel eastern portal, repair work to some structures (bridges and retaining walls) along the route, Quarry bridge No. 2 will be partially rebuilt, measures to stabilise the cliff faces in the Avon Gorge (including light scaling, rock pinning, the controlled removal of unstable blocks, and catch fences to the foot of the cliffs at three locations), construction compound and permanent maintenance compound off Clamage Road, highway modification works on Winterstoke Road and associated upgrading of traffic signals, a new pedestrian and cycle ramp between Ashton Vale Road and Ashton Road, permanent closure of Baron's Close Container Crossing and use of a construction compound at Liberty Lane sidings. In addition to these works, there are also planned works at the Freightliner depot on Liberty Lane, together with improvements to Parson Street Station and Bedminster Down Relief Line all of which will be carried out under permitted development rights but which are required for the operation of the DCO Scheme.

4.2 The above works will create the greatest potential for engagement of section 79(1) of the Act. However, the findings of the ES (Chapter 13 – Noise and Vibration (DCO Document Reference 6.16)) have confirmed that with the application of best practicable means, the preparation and implementation of a noise and vibration control plan (as part of the Construction Environmental Management Plan (**CEMP**) required for each stage of the authorised development) (as secured by Requirement 5 of the draft DCO (DCO Document Reference 3.1)) the noise and vibration effects of the DCO Scheme during the construction period are not considered to have a significant effect.

#### *Operation*

4.3 During the operation of the DCO Scheme, effects due to noise are expected to be limited to the operation of the new rail services, changes to road traffic using the local networks to the stations and operation of the new stations. The conclusions from the ES (Chapter 13 – Noise and Vibration (DCO Document Reference 6.16)) state that provided the mitigation measures proposed, i.e. the use of noise barriers, are implemented the noise levels during the operation of the DCO Scheme are not considered to have a significant effect.

4.4 As such, the Applicant considers that it is unlikely that sections 79(1)(g) or (ga) of the Act will be engaged by the proposed DCO Scheme.

## 5 Air Quality including Dust (section 79(1)(d))

### *Construction*

- 5.1 During the construction period of the DCO Scheme, various activities including demolition, earthworks, construction, storage or aggregate, tracking along dirt access road etc., emissions from construction plant and vehicles will result in a temporary increase in particulate matter in the air. However, due to the temporary nature of the works and the proposed control measures secured by the Requirements in the draft DCO (DCO Document Reference 3.1) (including the adoption of a CEMP to comply with the Code of Construction Practice (**CoCP**) (DCO Document Reference 8.14) and the Master CEMP) (DCO Document Reference 8.14), which will include an Air Quality and Dust Management Plan), the dust emissions produced would be minimal and the ES (Chapter 7 – Air Quality and Greenhouse Gases (DCO Document Reference 2.10)) has concluded that there will be no significant effect to the air quality as a result of the construction of the DCO Scheme.

### *Operation*

- 5.2 The operational phase of the DCO Scheme will add a new service on the Portishead Branch Line, which will introduce a new pollution source from diesel multiple units leading to an increase in exhaust emissions along the railway line and an increase in emissions of carbon. As part of the wider MetroWest scheme there will also be further services on the Severn Beach / Avonmouth line and the Bristol to Bath Spa line. However, rail transport is typically more energy efficient than road transport by virtue of the greater scale, lower rolling resistance and lower wind resistance. As a consequence, it would be expected to give rise to less pollution per passenger kilometre than road transport.
- 5.3 Under the ES (Chapter 7 – Air Quality and Greenhouse Gases (DCO Document Reference 2.10)), the operational phase of the DCO Scheme was considered in the following locations:
- (a) Portishead to Pill – the overall effects of the DCO Scheme on this area were considered to be not significant.
  - (b) Pill to Ashton Junction – local air quality effects due to the DCO Scheme near Ashton Junction will cause negligible increases in NO<sub>2</sub> and PM<sub>10</sub> for sites where the air quality is well within the air quality objective. The effects are therefore not considered to be significant.
- 5.4 As such, the Applicant considers that it is unlikely that section 79(1)(d) of the Act will be engaged by the proposed DCO Scheme.

## **6 Lighting (sections 79(1)(fb) and (fba))**

### *Construction*

- 6.1 During the construction phase, temporary site lighting will be required to facilitate the works in the construction areas with temporary lighting also used during any work at night. Requirement 5 of the draft DCO (DCO Document Reference 3.1) requires that the CEMP for each stage of the development must include a nuisance management plan regarding lighting (amongst other things) and Requirement 15 requires that prior to any stage of the development commencing written details of any temporary external lighting to be installed in connection with the construction of that stage, including measures to prevent light spillage, are approved by the relevant planning authority and then implemented during construction. All such lighting must then be removed at the completion of the relevant stage. The temporary site lighting that is required during the construction phase will be directional to minimise glare and light spill.
- 6.2 Other than in respect of temporary site lighting within the Avon Gorge, the ES (Chapter 11 – Landscape and Visual Impacts Assessment (DCO Document Reference 6.14) concludes that there will not be a significant effect during the construction phase.

### *Operation*

- 6.3 During the operation of the DCO Scheme there will be additional lighting from the movement of lit carriages during dusk/in the dark, there will be static light sources at signals, angled down the track and hooded. There will also be new lighting on the station platform and car park at Portishead and Pill, although this lighting will be dimmed when the stations are not in use (by using movement control) and outside of operational hours. There will also be new lighting on Trinity Bridge and lighting on the approach footpaths. The existing street lighting on Quays Avenue in Portishead, will be repositioned as part of the Quays Avenue diversion.
- 6.4 Requirements 27 and 28 of the draft DCO (DCO Document Reference 3.1) require that prior to any work commencing on Pill or Portishead Stations written details of any permanent lighting to be installed in connection with that work, including measures to prevent light spillage, are approved by the relevant planning authority. Any approved lighting must be implemented as such. Further, the ES (Chapter 11 – Landscape and Visual Impacts Assessment (DCO Document Reference 6.14) states that the impact of these elements of the DCO Scheme will not constitute a significant effect. As such, the Applicant considers that it is unlikely that sections 79(1)(fb) and (fba) of the Act are engaged by the proposed DCO Scheme.

## **7 Conclusions**

- 7.1 The Applicant has designed the development in such a way as to reduce and mitigate any significant environmental effects of the DCO Scheme in so far as it is able to and has also included a variety of measures to mitigate any other effects of the DCO Scheme which are not considered to be significant.
- 7.2 The conclusion that the Applicant has drawn from the ES is that, with the implementation of mitigation measures where appropriate (which will be secured by Requirements attached to the DCO), claims for statutory nuisance are unlikely to arise from the DCO Scheme.
- 7.3 The measures secured by the requirements contained in Part 1 of Schedule 2 to the draft DCO, which cover a number of relevant matters include:
- (c) A CoCP, and CEMP covering a wide range of matters (Requirement 5);
  - (d) Limits on construction hours and noise on the disused railway (Requirement 16);
  - (d) Control on lighting during construction of the railway line and associated works, as covered by the CEMP (Requirement 5) and the railway operations (Requirements 27, 28 and 29).
- 7.4 Notwithstanding the above conclusion that no claims for statutory nuisance should arise as a result of the DCO Scheme, the draft DCO that accompanies the application (DCO Document Reference 3.1) contains a provision, at Article 45 (Defence to proceedings in respect of statutory nuisance) that would provide a defence to proceedings for statutory nuisance should a such a claim be initiated against the Applicant, Network Rail Infrastructure Limited or their successors as undertakers under the terms of the DCO.
- 7.5 Given the DCO Scheme's status as an NSIP it is appropriate that the DCO Scheme is protected from proceedings under section 79 of the Act and is capable of continued operation.