



MetroWest+

Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.28 ExA.FI.D4.V1 – Application for Non-Material Change to draft Development Consent Order

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**Development Consent Order application for Portishead Branch Line - MetroWest Phase 1
Application Ref: TR040011**

Document ref: 9.28 ExA.FI.D4.V1

Application for Non-Material Changes to draft Development Consent Order as a result of the District Level Licencing for Great Crested Newts being agreed with Natural England

And

Application for Non-Material Changes to draft Development Consent Order to remove Work No. 27

1. Introduction

- 1.1 The Applicant respectfully asks that the Panel considers a second change to the draft Development Consent Order and related application documentation.
- 1.2 The Applicant believes that these proposed changes are non-material changes to the Order and asks that the Panel proceeds accordingly.
- 1.3 The Applicant sets out below:
 - i. its background to the proposed changes
 - ii. the proposed changes
 - iii. the case for proposed changes, and
 - iv. the detail of the proposed changes.
- 1.4 If the Panel is minded to agree to the request the Applicant will endeavour to submit the revised draft documentation at Deadline 5, or as the Panel so directs.

2. Background: District Level Licencing

- 2.1 The Panel is aware from ISH 1-3 that
 - 2.1.1 the Applicant has been investigating with Natural England regarding District Level Licencing replacing the need for a specific European Protected Species licence relating to Great Crested Newts; and
 - 2.1.2 the Applicant had now received (on 22 December 2020) an Impact Assessment & Conservation Payment Certificate counter-signed by Natural England. The date of the Certificate is 18/12/2020 as given in section 8. The certificate is provided at Appendix 1 to this Application document.
- 2.2 The Panel asked at ISH3 about progress on District Level Licencing and its impact on the draft Development Consent Order.
- 2.3 Immediately before the festive break the Applicant received confirmation from Natural England that District Level Licencing has successfully been applied for and a copy of Natural England's letter has been provided already to the Inspectorate.
- 2.4 A copy of the signed certificate from Natural England is attached at **Appendix 1**.

3. Proposed changes relating to District Level Licencing

3.1 There are three principal works that are relevant to District Level Licencing being secured. These are:

- (a) Work No. 10C – proposed new pond within the Portbury Wharf Ecology Park.
- (b) Work No. 12B - proposed pond as part of the ecological mitigation works proposed to the south of Sheepway, west of Station Lane, Portbury.
- (c) Work No. 16B – proposed pond immediately to the west of the M5 motorway at Cattle Creep Bridge, Easton-in-Gordano.

3.2 A brief description of each work and the relevant impacts of District Level Licencing are set out below.

3.3 *Work No. 10C*

Work No. 10C is proposed within the Portbury Wharf Ecology Park and would be created within the land shown as Plot 02/32 on the Land Plans.

This pond has actually already been created under permitted development rights by North Somerset Council and is in situ, having been created in 2020, following submission of the application for development consent. The local planning authority was content for the pond to be created as part of the planning permission already applicable to the nature reserve. New rights are therefore not required for constructing the pond.

Plots 02/31 and 02/32 are now sought only for temporary purposes, namely access for amphibian relocation in to the pond. If amphibians are found during construction, they can, in appropriate circumstances, be translocated to the new pond. Consequent amendments are proposed to be made to the draft Development Consent Order in Schedule 12 – land of which temporary possession may be taken.

Plot 02/32 was included in the application for a certificate s132 Planning Act 2008 consent. The plot can therefore also be removed from that application.

3.4 *Work No. 12B – pond and associated ecological work*

The pond forming part of Work No. 12B is no longer required as a result of Natural England's confirmation of District Level Licencing for Great Crested Newts.

The Applicant still proposes to carry out ecological mitigation within Plot 03/30 but does not believe that the proposed activities amount to specific works requiring development consent. These works will consist of use of the land for species relocation, planting to replace vegetation lost from activities related to Work No. 1 and Work No. 1A and for associated ecological management and mitigation.

Heads of Terms for purchase of the relevant land have been agreed (on 15 December 2020) and the Applicant intends to proceed with the purchase of this land for the associated ecological works.

The Applicant therefore proposes that Plot 03/30, 03/32 and 03/33 remain within the Order lands but Work No. 12B is removed from the Order and the Works Plan.

3.5 *Work No. 16B*

The Applicant has been in extensive negotiation with the freehold owners of Plot 05/85. The Panel has already resolved to permit a non-material change in relation to part of Plot 05/85, Work No. 16D being a flood mitigation re-profiling of land on the western side of the Easton-in-Gordano stream which bisects Plot 05/85.

As a result of the District Level Licencing being issued by Natural England, Plot 05/85 can be further reduced in area. The Applicant would, if this application to change the dDCO is agreed to by the Panel, seek to acquire only a permanent new right connecting Plot 05/86 to Plot 05/75 on Bristol Port Company's neighbouring land to the west of 05/85.

4. Additional Change – removal of Work No. 27

The need for the ramp originally arose when the DCO Scheme proposed for MetroWest Phase 1 was to operate a half hourly passenger train service (while also allowing for an hourly freight path in each direction). The draft Transport Assessment for these proposals identified a need for alternative highway access for Ashton Vale Road due to the increase in the duration of the level crossing barrier down times and the increase to frequency of the cycles of the operation of level crossing barriers. The intention was to provide alternative highway access from the west and close the existing level crossing. This meant that in order to ensure pedestrians would be able to continue to access Ashton Vale Road from the Winterstoke Road area it would be necessary for the scheme to install a pedestrian ramp along the side of Babcock connecting Ashton Vale Road to Ashton Avenue will leads onto Winterstoke Road.

When the DCO Scheme was revised in 2017 to an hourly passenger train service (while also allowing for an hourly freight path in each direction), the Transport Assessment was completely reassessed. The outcome of the new Transport Assessment was that the duration of the level crossing barrier down times was not expected to increase and while the frequency of the cycles of the operation of level crossing barriers would increase, mitigation measures would be delivered such that there would be no overall detriment to the existing highway conditions. These mitigation measures are:

- Extend the length of the left turn only lane on Winterstoke Road (into Ashton Vale Road)
- Install MOVA on the highway traffic signals for the Ashton Vale Road / Winterstoke Road junction.

Work No 27 is not an integral part of the mitigation. The DCO Scheme can be delivered without the ramp. With the level crossing retained, pedestrians will be able to continue to access / egress between Winterstoke Road and Ashton Vale Road, except when the level crossing barriers are down. DCO Doc Ref 6.25 ES Volume 4 Appendix 16.1 Transport Assessment Pt 18 Appendix N (APP-172) sets out the duration and the frequency of the cycles of the operation of level crossing barriers. Table 1 on page 43 of Part 3: Ashton Vale Road Level Crossing Train Times, of the document shows the hourly passenger train service along with an hourly freight train in one direction, would result in 3 cycles of the level crossing per hour (Realistic Worse Case) and this would increase to 4 cycles of the level crossing in the rare event of an hourly freight train in both directions (Theoretical Worst Case Scenario). Table 2 on page 44 translates these cycles of the level crossing into a total barrier down time per hour. For 3 cycles of the level crossing per hour (Realistic Worse Case) the total barrier down time per hour is between 5 minutes 45 seconds and 6 minutes and for 4 cycles of the level crossing in the rare event of an hourly freight train in both directions (Theoretical Worst Case Scenario) the total barrier down time per hour is 7 minutes 50 seconds.

Network Rail undertook a formal Level Crossing Risk Assessment leading up to the submission of the DCO Application (Doc Ref 8.7 Level Crossing Risk Assessment Report – Ashton Junction (APP-206)). The report assessed 5 options which in summary were:

- Option 1 Baseline – present day freight train operations only
- Option 2 Baseline plus MetroWest passenger train operations, without the pedestrian ramp
- Option 3 As option 2 but with assumptions adjusted to include 'unwillingness to wait / abuse' by pedestrians, without the pedestrian ramp
- Option 4 As option 2 but with the pedestrian ramp
- Option 5 Level crossing is closed (alternative highway access is provided).

In relation to Option 4 Baseline plus MetroWest passenger train operations, on the Portishead Branch Line, paragraph 46 of the report states:

“Furthermore, on leaving the stadium after the match, it is unlikely that many fans would use the ramp, given its location on the opposite side of the railway, and the additional walking distance, without being directed by Police to do so.

The additional walking distance to use the ramp is about 300 metres for fans after the match returning to coaches or cars that may be parked in Ashton Vale Road. Further the report at paragraph 48 states the ramp would offer:

“very modest additional benefits”

Given the concerns that the Panel have expressed regarding the inclusion of Work No 27, the Applicant has discussed its provision further with Bristol City Council. The City Council has agreed that Work No. 27 provides no tangible benefit and as a result the City Council is content to agree with the Applicant that the Ramp may be removed without impacting on the effectiveness of the Applicant's proposed mitigation for Ashton Vale Road.

5. Full details of proposed changes

5.1 The Applicant provides with this application, to illustrate the proposed changes to those documents, if the Panel agrees to the proposed changes:

5.1.1 Mark-up of dDCO;

5.1.2 Mark up of Explanatory memorandum; and

5.1.3 Mark up of Statement of Reasons

to show the proposed changes if the Panel agrees to this application for a non-material change. The documents are at Appendix 2-4 respectively.

Appendix 5 lists the changes proposed to these documents and to the plans and documentation supporting the application for development consent.

6. Are the proposed changes material changes to the draft Order?

6.1 Whilst this is of course for the Panel to decide, the Applicant has reviewed in detail Advice Note 16 published by the Planning Inspectorate in March 2018 (AN16).

6.2 The Applicant notes there is no definition of what is material but the Advice Note does differentiate between material changes and changes that amount to a different project.

6.3 For the reasons set out below the Applicant does not believe that the proposed changes relating to the GCN ponds represent a project that is different from that previously submitted for the Panel to examine. The changes are relatively minor in nature and the elements to be removed were required only to mitigate the effects of the proposed scheme on protected species.

6.4 The Applicant and Natural England, together with the local planning authority, are content with this to now be dealt with by way of District Level Licencing, with a financial contribution from the Applicant replacing the proposals for the works required. In any event, one of the three works has been provided under different processes and should in whatever decision is otherwise made, be removed from the Order process.

6.5 In relation to all three of the proposed works, removal of the works and the associated requirements would mean that there is less pre-commencement activity required for the Applicant thereby speeding up the scheme. This does not however in any sense suggest that the mitigation is lost, it is simply being secured by alternative means, and providing more optimum conditions, as agreed with Natural England.

- 6.6 In terms of the Order limits and land being subject to compulsory powers or temporary possession, the only impacts are to reduce the area of land affected by such powers and in one location – Plot 05/85. The proposed changes in relation to Work No. 16B reflect the Applicant's reaction to concerns expressed both by the freehold owner and Bristol Port Company). It is anticipated that both will support the proposed change.
- 6.7 In relation to land previously required for Work No. 10C, temporary powers would still be sought because there are other compelling reasons for those powers. Temporary access to allow for amphibian translocation a result of the construction of the NSIP would justify such powers being included in the Order if made. Permanent new rights over plot 02/32 would no longer be sought.
- 6.8 In relation to land required for Work No. 12B, freehold acquisition is still sought because there are other compelling reasons for the acquisition of the relevant land – principally to replace vegetation lost as a result of the construction of the NSIP and for ecological mitigation.
- 6.9 As explained above, Heads of Terms have been exchanged for the acquisition of this land and it is anticipated that freehold acquisition by agreement will proceed swiftly, albeit the Applicant still seeks compulsory powers for the acquisition in the event that freehold acquisition cannot occur by agreement within a timeframe required by the Applicant.
- 6.10 Overall, the Applicant does not believe that the proposed changes represent a project that is different from that previously submitted for examination nor, for the reasons described, does it believe that the changes are material. They simply reflect changes brought about as a result of the Applicant's successful negotiation for a District Level Licence being approved by the relevant regulating authority (Natural England).
- 6.11 In relation to Work No. 27, the ramp is not required as mitigation. It was proposed as an additional benefit to pedestrians and cyclists and located wholly on land belonging to Network Rail Infrastructure Limited.
- 6.12 As the Applicant had not included land in the Order for utility diversions, anticipating a compelling case for compulsory acquisition could not be made out, and no additional land for utility diversions was included. As a result no other party is affected by the removal of the Work from the dDCO.

7. Timetable for submitting revised documents

- 7.1 The Applicant suggests that the relevant documentation instead be submitted at Deadline 6, encompassing both the changes required from the Panel's decision dated 22 December 2020 and, if the Panel is content to allow the proposed changes requested in this second application, the changes required arising from decision the Panel may make in relation to this application for changes to the dDCO.
- 7.2 This request is made because there will be a substantial amount of changes to, in particular, plans and the Environmental Statement text and figures if this second proposed change is permitted by the Panel. It would be more efficient if these documents were changed only once.
- 7.3 It would also reduce the risk of interested parties and affected parties being unsure as to which is the correct documentation to refer to and reduce the amount of documentation on the examination documents list.
- 7.4 The Applicant believes that the additional clarity and certainty that would be provided by submitting just one set of revised documents would be of benefit to all parties and would respectfully request that the Panel's decision of 22 December 2020 is amended so that the Deadline for submission of revised documentation is extended to Deadline 6, which was discussed at the ISH 2 hearing on 11th January.

8. Conclusions in relation to the proposed changes

- 8.1 In light of the information provided above and with this letter, the Applicant believes that the Panel can be satisfied that the changes proposed are not material and have no significant bearing on the application being made nor the works being carried out for the restoration of passenger railway services on the Portishead branch line. It is anticipated that all parties directly affected by the changes will be content with their being proposed and that the changes will not give rise to any additional significant environmental effects of the scheme as a result of the District Level Licencing now having been agreed by Natural England.
- 8.2 The compulsory acquisition of land is affected but not in such a way as to engage the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.
- 8.3 In relation to Work No. 27 no affected party other than Network Rail Infrastructure Limited is affected by the removal of the Work from the dDCO. No amendment to the Order Limits is required.
- 8.4 Overall the Applicant believes that the removal of the relevant works from the application for consent is appropriate, proportionate and should not be considered to be material changes to the application being made.
- 8.5 The application is therefore made to the Panel for the relevant documentation to be amended to reflect the content of this letter and its enclosures.
- 8.6 The Applicant can provide such further information as the Panel may require in respect of the proposed changes, ideally at ISH2 or 3 or thereafter in correspondence.

Womble Bond Dickinson

On behalf of the Applicant, North Somerset District Council

19 January 2021

Appendix 1 - Impact Assessment & Conservation Payment Certificate counter-signed by Natural England

Appendix 2 - Mark-up of dDCO;

Appendix 3 - Mark up of explanatory memorandum; and

Appendix 4 - Mark up of Statement of Reasons

Appendix 5 – proposed changes to documents and to the plans and documentation supporting the application for development consent