

**Application by North Somerset Council for an order granting development consent for the Portishead branch line - MetroWest phase 1**

**Planning Inspectorate reference TR040011**

**Interested party reference PORT-S57657**

**Note on behalf of First Corporate Shipping Limited trading as The Bristol Port Company (BPC) on train path provisions dated 19 January 2021**

1. This note explains the use of the Royal Portbury Dock (**RPD**) rail link for freight trains travelling to and from RPD and is provided in response to action points 19 and 20 arising from Issue Specific Hearing 2 on 11 January 2021. The rail link connects RPD to the Portishead to Bristol branch line and then to the national rail network.

**Summary**

2. Currently, as described below, the number of freight train daily movements on the rail link are restricted by a planning condition (see below). It is a restriction that, in future, BPC could seek to vary by a further application to the local planning authority and the restriction is not one imposed by the Network Code or otherwise by the application of the Railways Act 1993.
3. BPC benefits from a separate works agreement with Network Rail (as it now is) which protects 40 daily train movements (also see below).
4. Entirely separately from the planning position, BPC acknowledges that access for freight trains to the national rail network is subject to the Network Code. However, the protections which it is currently seeking are not an allocation of train paths under that regime. Instead, both now and in the future, BPC requires that the number of freight train movements currently permitted by planning condition and protected under the works agreement cannot be reduced, restricted or otherwise interfered with as a consequence of passenger train timetabling on the Applicant's proposed railway.
5. BPC therefore seeks the inclusion in the proposed development consent order (**DCO**) of an additional protective provision as follows:

*"Despite any provision of this Order and any power which may be conferred on, or from time to time be vested in, the undertaker or Network Rail or any other person pursuant to this Order or otherwise, the railway authorised by this Order must not be constructed, maintained, altered, used or operated by the undertaker or Network Rail or any other person in a manner which would or might cause the number of train paths available to be insufficient to enable the passage between the Port's railway and all other parts of the national rail network of 20 freight trains daily per calendar year in each direction".*

**Planning permission**

6. In 2000-2001 BPC constructed a constructed the rail link on its land at RPD. Connection into the network was made at a point on the former Portishead to Bristol branch line.
7. The majority of the rail link was developed by BPC under its permitted development rights. BPC was granted planning permission by North Somerset District Council (as it then was) on

26 October 2000 (application number 99/0737) to construct only that part of the rail link lying on land to the south of the M5 bridge, which permission included the following condition:

*"16. The number of freight trains using the rail link shall not exceed an average of ten trains daily per calendar year in and out of the Port".*

8. On 26 October 2000 North Somerset District Council, BPC (as Developer) and the City Council of Bristol entered into an agreement under section 106 of the Town and Country Planning Act 1990, clause 9.1 of which stated as follows:

*"On any day that the Bristol to Portishead railway branch line is now or in the future used for passenger services in so far as it is within its power to do so the Developer shall ensure that freight trains from the Rail Link shall not be permitted to use said branch line between the hours of 0700 until 0900 and 1630 until 1830 on Mondays to Fridays inclusive".*

9. Faced with demand for additional use of the line, in 2011 BPC approached North Somerset Council (**NSC**) seeking a variation of condition 16, to increase the amount of freight traffic permitted over the rail link. The planning condition referred to in paragraph 7 above was varied on 2 December 2011 (application number 11/P/1893/F) to provide as follows:

*"3. The number of freight trains using the Rail Link shall not exceed an average of twenty trains daily per calendar year in and out of the Port and, during any time when the Bristol to Portishead railway Branch Line is in use for scheduled passenger Services, the number of Freight Trains using the Rail Link shall not exceed one train per hour in each direction".*

10. NSC's officer's report in relation to the 2011 application noted that *"The expansion of movements to 20 trains in each direction per day raises issues regarding the proposed re-opening of Portishead Passenger Rail Line, which would share the existing freight line to Portbury Junction and re-introduce to 4 mile section of track to Portishead."*

11. Modelling work was therefore undertaken by Network Rail, the outcome of which was recorded in the NSC officer's report as follows:

*"The conclusion of this research is that expanding freight train movements from 10 to 20 trains in each direction would not cause us any problems with the delivery and operation of a re-open Portishead line.*

*A recommended condition will require that freight trains are limited to one train per hour in each direction, per day. In that respect the maximum number of freight trains that could be operated on the line without causing a problem for Portishead Rail, 24 trains in each direction per day i.e. one per hour, every hour is acceptable."*

12. It is clear from this that the restriction in condition 3 of planning permission 11/P/1893/F was understood and intended by NSC to allow 20 trains per day in each direction, that is 40 movements in total over the rail link.

### **Works agreement**

13. Before BPC built the rail link, the whole of the Portishead to Bristol branch line was out of commission and/or disused. Therefore, on 22 November 2000 BPC and Railtrack plc (now Network Rail) entered into a works agreement pursuant to which Railtrack undertook to carry out certain works to bring the relevant part of the branch line between BPC's rail link and Bristol back into commission. The relevant provisions of the works agreement, which (except as specified) remain in force, are summarised below.

- 13.1 The "Railtrack Works" to be done by Railtrack and paid for by BPC were defined as *"works to upgrade and recommission the Relevant Part of the Branch Line, incorporating a no signalman*

*token signalling system, in all respects fit to enable the passage over the Relevant Part of the Branch Line and onto the Railtrack Network of forty freight trains per day (twenty inwards and twenty outwards) of a maximum axle load of 25.5 tonnes, a maximum length of 750 metres and a maximum running gauge allowing for a 9ft 6in box on a standard deck height wagon".*

- 13.2 The agreed annual maintenance payment due from BPC was stated (in clause 7.5) to have been "*calculated by reference to an estimated daily use of twenty (20) trains of forty (40) movements*" but if there were to be "*a significant alteration in the number of such train movements which makes it reasonable for Railtrack to receive a higher maintenance payment the parties shall seek to agree a higher payment*".<sup>1</sup>
- 13.3 Clause 15 provides that "*The development of passenger services on the branch line shall be encouraged on the basis that they could supply additional revenue. The ability to expand freight train operations must not be unreasonably compromised by the development of passenger services. The twenty trains (40 movements) per day to use the Branch Line between Bristol Port Co at Portbury and Bristol Temple Meads will be protected, subject to Regulatory approval and an agreed Track Access Agreement*".
14. The terms of the agreement reflect the shared BPC/Railtrack understanding and aspiration that:
- 14.1 the works to the branch line were specifically designed to accommodate 40 freight train movements (20 trains) per day; and
- 14.2 even if passenger services were to be re-introduced on the Portishead to Bristol branch line the ability for at least 40 freight train movements (20 trains) per day to use it had to be protected, and the ability further to expand freight operations should also not be unreasonably compromised.

#### **Permitted train movements**

15. Given the terms of condition 3 of planning permission 11/P/1893/F and paragraphs 12 and 13.3 above, BPC disagrees with:
- 15.1 comments made on behalf of the Applicant and Network Rail at Issue Specific Hearing 2 on 11 January 2021 that they each consider train operations under any BPC/Network Rail agreement relating to the re-opening of the branch line and under the planning permission to be limited to a total of 20 movements per day (whether that be 20 arrivals, 20 departures or 10 trains in each direction); and
- 15.2 the Applicant's statement at deadline 3 in its comments on BPC's responses to ExAQ1 GC.1.13 that the number of train paths to be taken into account for BPC is "*20 paths (in total per day)*".
16. The correct number of daily freight train movements protected by the works agreement and permitted by the planning permission is 40, that is 20 trains arriving at RPD and 20 trains departing RPD each day.

#### **Train movements and train paths**

17. The works agreement's requirement to protect 40 freight train movements per day does not mean that only 40 paths for freight trains need to be available over the branch line.

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<sup>1</sup> As envisaged by the works agreement, these provisions have now been superseded by the connection agreement relating to the rail link entered into between BPC and Network Rail.

18. In order for a freight train departing RPD to pass over the rail link and over the branch line it must then be able to continue its journey and pass over further parts of the national rail network to its intended destination. Similarly a train destined for RPD will need to be able to pass over the relevant part of the network from its origin to reach Bristol and then continue its journey towards RPD. Unless there are sidings in a suitable location and available at the relevant time to allow a freight train to wait for its onward rail path in each case, to achieve this continuity of journey there will need to be a train path available over the branch line at a time which enables that path to connect with an available path or set of paths over the relevant parts of the network.
19. Depending on the availability of paths on the network and the origin/destination of the freight trains, in order to enable 40 train movements per day by freight operating companies (FOCs) over the rail link and branch line, in excess of 40 trains paths over the branch line itself may need to be available for allocation to those FOCs.
20. BPC accepts that the allocation of rail paths to FOCs is a matter for Network Rail under the Network Code and the Railways Act 1993 and does not suggest that the draft DCO should seek to control that allocation. Instead BPC seeks to ensure that the passenger line must be operated in a way which ensures that, taking into account the other restrictions imposed on the operation of the rail link, sufficient train paths will remain available over the branch line to enable freight traffic to and from RPD at the levels protected by the works agreement and permitted by the planning permission.