

# **North Somerset Council**

## **REPORT TO THE COUNCIL**

**DATE OF MEETING: 25<sup>TH</sup> JUNE 2019**

**SUBJECT OF REPORT: METROWEST PHASE 1 SUBMISSION OF DEVELOPMENT CONSENT ORDER APPLICATION AND ASSOCIATED APPROVALS**

**TOWN OR PARISH: ALL**

**OFFICER/MEMBER PRESENTING: CLLR JAMES TONKIN, EXECUTIVE MEMBER FOR PLANNING AND TRANSPORT**

**KEY DECISION: N/A**

## **RECOMMENDATIONS**

The Council is asked to:

1. Note
  - a) the estimated out-turn capital cost of MetroWest Phase 1 entailing re-opening the Portishead Branch Railway Line and providing an enhanced passenger train service for the Severn Beach line and the Bath line, is £116.4M and that funding for the project to this amount has now been allocated, following the allocation of £15M by the Council on 12<sup>th</sup> February 2019 and the allocation of £31.9M by the Secretary of State on 5<sup>th</sup> April 2019. The drawdown of this funding is subject to the business case approvals, as would be expected for external funding allocations;
  - b) the project total spend to date from commencement in 2013 to the end of 2018-19 financial year is £16.167M including £0.973M of land acquisition costs and that there remains a risk of revenue reversion should the project not be delivered and the quantum of which risk will increase as further funds are spent until project assets are delivered;
  - c) The critical path for the project is approval of the Final Approval Business Case, scheduled for autumn 2021. The major milestones required to achieve approval of the Final Approval Business Case in summary are; securing all necessary consents, including the Development Consent Order (DCO), detailed design (GRIP 5), and completion of the procurement of the construction works. The scheme will not be implemented until the approval of the Final Approval Business Case by the Council, the West of England Combined Authority (WECA), the West of England Joint Committee and the Department for Transport. Upon approval of the Final Approval Business Case construction contracts can then be awarded and construction can commence;

- d) that the DCO application will include powers for the compulsory acquisition of land as shown on the attached land plans (together with such additional land and rights or changes to the proposed type of acquisition as the project team may identify as being required for the railway project to proceed), including:
  - i. Land required for the proposed railway reopening;
  - ii. Working space compounds and haul roads, construction of the proposed railway;
  - iii. Land required for highway works required for the railway project to proceed;
  - iv. Environmental mitigation land; and
  - v. New rights and temporary possession powers to support the construction and operation of a new railway;
  - vi. The acquisition of public open space and the provision of exchange land;
- e) that the proposed DCO will also seek powers to:
  - i. construct, maintain and operate the new railway, provide accommodation works for the new railway such as new accesses, drainage channels and works to divert utilities' apparatus;
  - ii. divert and stop up Quays Avenue, Portishead, as well as powers to temporarily stop up rights of way or restrict traffic on highways in Portishead Portbury and Pill; and
  - iii. make temporary and permanent traffic regulation orders;
- f) the requirement for the functions of the Council that are engaged as planning authority, environmental health authority, highway authority, lead local flood authority, and in its responsibility for parks and open spaces to be administered separately from the council's role as a promoter of the MetroWest Phase 1 project.
- g) that the human rights and public sector equalities duties of the Council are engaged by the application for the DCO and the implementation of the DCO, if made, as are outlined in this report.

2. Authorise the Executive Member for Planning and Transport in consultation with the Executive Member for Finance and Performance to finalise and submit to the Planning Inspectorate the application for the DCO for the powers to construct Phase 1B of the MetroWest Phase 1 project comprising the works required to re-open the Portishead Branch Railway Line (the DCO Scheme), subject to the following decisions and matters, which are scheduled to be taken on the 14<sup>th</sup> June 2019:
- a) confirmation by West of England Combined Authority (WECA) of its authorisation to complete the Initial Promotion Agreement version 3 with North Somerset Council (NSC);
  - b) confirmation by the WECA of its agreement to submit the DCO application, as joint promoter in connection with its share of project risks and liabilities;
  - c) confirmation by the WoE Joint Committee of its authorisation for the submission of the DCO application, as co-funder;

- d) confirmation by the WoE Joint Committee of its approval for the project to drawdown a further £4.491M for 2019/20 and £7.159M for 2020/21, totalling £11.650M of Local Growth Funding allocated to the project, to complete all technical work feeding into the Final Approval Business Case, including the completion of major processes, planning and environmental consents, undertaking detailed design (both the railway and highway works) and the procurement of project construction;
    - e) receipt of a letter of no objection issued by Network Rail to North Somerset Council in respect of the DCO application documentation.
3. Authorise the Executive Member for Planning and Transport, in consultation with the Executive Member for Finance and Performance to:
  - a) finalise and complete the Promotion Agreement with Network Rail for the joint working arrangements for taking the project through the Development Consent Order process, as outlined in section 13 of this report,
  - b) approve further addendums of the Development Services Agreement with Network Rail, to progress the procurement of GRIP 5 to 8, to undertake GRIP 5 detailed design and to provide technical support through the DCO process, and
  - c) note the estimated cost of a) and b) above has been included within the project budget for 2019/20 (£4.491M) and 2020/21 (£7.159M), agreed by the Council on 12<sup>th</sup> February 2019.
4. Authorise the addition of £4.491M into the 2019/20 capital programme for MetroWest Phase 1, funded from headroom resources, previously earmarked for the project, until approval has been granted to drawdown Local Growth Funding, as referred to in recommendation 2d. Authorisation is also sought to delegate authority to the S151 officer to switch the funding on receipt of the associated confirmation from the WECA as the administering body.
5. Should the decisions be taken by the Executive Member for Planning and Transport as per recommendations 2 and 3; council authorises the Director of Development and Environment to:
  - a) procure safety works to Sheepway Bridge, Old Portbury Station Bridge, Royal Portbury Dock Road Bridge and Marsh Lane Bridge, at an estimated cost of up to £400,000, in advance of the start of the main railway works, to avoid delay to the overall programme and to reduce overall costs.
  - b) take all necessary steps to secure the making of the DCO by the Secretary of State including all of the provisions described in this report and to serve all notices requiring information on title from parties interested in land, prepare environmental reports, Statements of Reasons and other required supporting documents and for the presentation of the Council's case at the examination into the proposed DCO that will be held by the Planning Inspectorate on behalf of the Secretary of State.
  - c) make or request the making and service of all notices and Orders as are required to secure the making of the DCO and to advertise the DCO being

made, including acquisition of land (including the acquisition of public open space at Portishead), new rights over land, temporary possession of land; traffic regulation orders; stopping up and diversion of highways; the temporary stopping up or restriction of use of highways, as outlined in section 9 of this report.

- d) agree terms for the acquisition by agreement of land or any interests in land and to complete acquisition transactions (including the entering into of options for the acquisition and/or use of land and agreements as to compensation and/or accommodation works) as may be required for the proposed railway and associated works, up to a total ceiling of £1M, in advance and for the duration of the DCO examination, as outlined in section 16 of this report.
- e) make any necessary payments and compensation (including interim payments, advance payments, payments relating to blight notices and payments of interest as well as payment of professional fees either as agreed with owners or as determined by the Lands Chamber of the Upper Tribunal) in relation to the acquisition, extinguishment, overriding or suspension of rights in land or the granting of new interests in land, including powers of temporary possession or use of land, as outlined in section 9 of this report.
- f) enter in to agreements and agree protective provisions with statutory undertakers including provision for expenditure on the costs for drafting the agreements and activities reasonably required for the successful implementation of the DCO Scheme, at an estimated cost of up to £120,000 as outlined in section 9 of this report.
- g) include in the DCO powers for the grant of new rights over public open space held by North Somerset Council at Watch House Hill, Pill and to secure provisions for the temporary use of land at Victoria Park, Pill, as outlined in section 9 of this report.
- h) seek powers in the DCO to modify existing legislation and to dis-apply byelaws as required for the DCO Scheme, as outlined in section 10 of this report.
- i) seek powers in the DCO to alter the existing public right of way network including the creation of new public rights of way, modification of the existing right of way and the extinguishment of public rights of way together with the temporary suspension of public rights of way during construction periods, as outlined in section 7 of this report.
- j) seek powers in the DCO (and to rely on and use the Council's existing powers) to access land for the purposes of environmental or pre-construction surveys and other required survey purposes as required for the DCO Scheme, as set out in section 9 of this report.
- k) negotiate and enter into any agreements or give assurances or undertakings or conclude compromise agreements, to secure the withdrawal of objections to the DCO, as outlined in section 11 of this report.

- l) reach agreement with Network Rail for the transfer of the benefit of those provisions of the DCO relating to the operation of the railway to Network Rail, as well as for the transfer to Network Rail of land held by the Council required for railway operations, conditional on the approval of the Final Approval Business Case in due course, as set out in section 13 of this report.

## **1. SUMMARY OF REPORT**

- 1.1 MetroWest Phase 1 (the Project) proposes to upgrade the existing local train service for the Severn Beach Line and the Bath Spa to Bristol Line (Phase 1A) and re-open the Portishead rail line with stations at Portishead and Pill (Phase 1B). The Project is being promoted by North Somerset Council and the West of England Combined Authority (WECA) on behalf of the authorities across the West of England including; Bath & North East Somerset, Bristol City and South Gloucestershire Councils. The Project forms part of a wider MetroWest programme to deliver strategic enhancements to the local rail network over the next 10 years.
- 1.2 The project has been a priority for the Council since it was mobilised in 2013. The project is technically complex and must complete multiple formal processes which are triggered by primary legislation. The benefits of the project are very wide ranging and will bring 50,000 residents of the district within the immediate catchment of the national rail network.
- 1.3 All activities and spend to date, on design development, technical assessment, consultation and engagement etc has been to achieve the major project milestone of submitting a Development Consent Order (DCO) application and progressing to detailed design (GRIP 5), to enable the Final Approval Business Case to be completed and submitted for approval in 2021, as per the project programme. This report therefore represents a significant milestone in the progressing the delivery of MetroWest Phase 1, which NSC and WoE partners have been jointly promoting over the last five years.
- 1.4 The core element of MetroWest Phase 1 in respect of infrastructure is Phase 1B, the reopening to passenger services the Portishead Branch Line railway. Phase 1B is a Nationally Significant Infrastructure Project (NSIP) and therefore requires a DCO for powers to build and operate the railway – this is referred to in this report as the DCO Scheme. The DCO would, in summary, give consent for:
  - (i) works that would otherwise require planning permission;
  - (ii) alteration to the highway network including to footpaths, cycle ways and bridleways;
  - (iii) temporary and permanent traffic regulation measures; and
  - (iv) powers of compulsory land acquisition and taking land on a temporary basis for construction and maintenance purposes.
- 1.5 The powers sought in the DCO will be for the Council, acting as DCO Scheme promoter on behalf of itself and WECA. The powers to operate and maintain the new railway will in due course be transferred to Network Rail, together with the land required for the operation and maintenance of the new railway. The Council will be responsible for compensation for land acquisition and the costs of impacts on statutory utilities' apparatus.

1.6 Formal pre-application consultation on re-opening the Portishead Branch Line has been undertaken and as a result a small number of refinements to the scheme are proposed. The next major scheme milestone, following completion of the evidence base and prescribed documents that are required for the DCO application, is to make the application itself. Documentation to be submitted includes the Environmental Statement along with around 40 other document types, including details on permanent and temporary compulsorily acquisition of land, and a funding statement.

1.7 This report comprises:

- i. This summary of the report;
- ii. Background to the DCO Scheme and summary of powers sought in the draft DCO;
- iii. Description of the DCO Scheme;
- iv. Principal Policy Considerations;
- v. The Local Planning Policy Position;
- vi. DCO Scheme Viability and Funding Position;
- vii. Consideration of the Highways Impacts including on Public Rights of Way and Permissive Path Networks;
- viii. Traffic Regulation Orders;
- ix. Need for Compulsory Acquisition Powers;
- x. Other Important Provisions in the DCO;
- xi. Delegation to officers to take the application through the DCO process;
- xii. Separation of Responsibilities;
- xiii. Commercial Arrangements with Network Rail and Transfer of Land and Powers to Network Rail;
- Xiv. Consultation;
- Xv. Detailed Design;
- Xvi. Preliminary Works and land acquisition in advance of the approval of the Final Approval Business Case;
- Xvii. Financial Implications;
- Xviii. Legal Powers and Implications;
- Xix. Risk Management;
- Xx. Equality Implications
- Xxi. Corporate Implications
- Xxii. Options Considered

1.8 The authorisations sought in this report if agreed will enable the:

- DCO application to be submitted,
- progression of all DCO related processes, including legal processes
- progression of the land assembly for the project including land acquisition and acquisition of land options,
- commissioning of the detailed design (GRIP5),
- commissioning of safety works to four road over rail bridges on the dis-used line in advance of the main construction works,
- progression of all other technical work feeding into the completion of the Full Approval Business Case

The estimated cost of this has been included within the project budget for 2019/20 (£4.491M) and 2020/21 (£7.159M), agreed by the Council on 12<sup>th</sup> February 2019.

- 1.9 Following the completion of the DCO process and if the DCO is made by the Secretary of State, a report will be brought to members to seek approval of the Final Approval Business Case which will also need to be approved by WECA, WoE Joint Committee and the Department for Transport, as co-funding partners. The Final Approval Business Case has to confirm that all the powers needed to deliver the scheme have been secured, that the detailed design (GRIP5) and construction procurement has been completed and the final construction cost is confirmed and is affordable.
- 1.10 Subject to the approval of the Final Approval Business Case by co-funding partners, members will be asked to approve the award of construction contracts to implement the DCO Scheme. It is anticipated that the Final Approval Business Case will be brought to members in 2021. The construction of the DCO scheme, and compulsory powers of land assembly will not commence until a report on the Final Approval Business Case has been approved by members and approved by the co-funding partners.
- 1.11 Attached to this report are exempt appendices which are not for publication as they contain information regarding financial information or business affairs of particular persons. The appendices set out details in respect of overall property costs anticipated for the DCO Scheme and the negotiation of terms to permit interference by the Council with the apparatus of statutory undertakers.

## **2. BACKGROUND TO THE DCO SCHEME AND SUMMARY OF POWERS SOUGHT IN THE DRAFT DCO**

- 2.1 MetroWest Phase 1 is a major cross boundary rail scheme that proposes to re-open the Portishead rail line (MetroWest Phase 1 B) with stations at Portishead and Pill and operate an hourly passenger train service, with the possibility of an additional train in the morning peak and evening peak (hourly plus). This will entail operating up to 20 passenger trains in each direction per day Mon to Sat, with a reduced number of trains operating on Sundays. The project will also upgrade the existing local train service for the Severn Beach Line and the Bath Spa to Bristol Line (MetroWest Phase 1A). This will entail a half hourly passenger train service for local stations to Avonmouth (hourly for St. Andrews Road and Severn Beach stations) and a half hourly service for local stations between Bristol Temple Meads and Bath Spa. An option to extend the service beyond Bath Spa to Westbury is currently under technical development. It is anticipated that the promoting authorities will be in a position to make a decision on the Westbury position in early 2020.
- 2.2 The Project is being promoted by North Somerset Council and WECA on behalf of the authorities across the West of England including; Bath & North East Somerset, Bristol City and South Gloucestershire Councils. The Project forms part of a wider MetroWest programme to deliver strategic enhancements to the local rail network over the next 10 years.
- 2.3 The Council and WECA are both co-promoters of the project and each has a 50% share of the risks and liabilities of the whole project (Phase 1A and Phase 1B). The

joint working arrangements between the Council and WECA up to Final Approval Business Case approval are set out in the Initial Promotion Agreement version 3. Authorisation to enter into Initial Promotion Agreement version 3 was given by the Council at its meeting on 12<sup>th</sup> February 2019. WECA are progressing their authorisation to enter into the agreement and to agree the submission of the DCO application in relation to its share of project risks and liabilities. It is anticipated this will be confirmed by WECA on 14<sup>th</sup> June, ahead of the Council's meeting on 25<sup>th</sup> June 2019.

- 2.4 The West of England Joint Committee are the primary decision maker in respect of the allocation of regional funding streams and provide the strategic policy direction for joint working and cross boundary transport projects. It will therefore be necessary for the West of England Joint Committee to approve the drawdown of a further £11.650M of Local Growth Funding (refer to section 17 of this report for further details) and to approve the submission of the DCO application, as co-funder. The West of England Joint Committee will consider this at its meeting on 14<sup>th</sup> June 2019.
- 2.5 The infrastructure works required to upgrade the Severn Beach Line and the Bristol to Bath Spa Line are relatively modest entailing a facility to turnback trains at Bathampton, east of Bath Spa for the Bath to Bristol Line. The option to extend the service to Westbury would seek to address overcrowding issues on the corridor and potentially provide a better mix of local and inter regional train services for the corridor. Should the extension to Westbury be taken forward, it would remove the need for the Bathampton turnback although some upgrade works are needed to five pedestrian level crossings east of Bath. Based on the available information to date the overall position is that the extension to Westbury is achievable within the scheme programme and could result in a net cost saving approximately £1M, subject to more detailed work. These works can be undertaken using Network Rail's permitted development rights.
- 2.6 Re-opening the Portishead Line requires major works to the existing Portbury Freight Line and works to re-build the dis-used line from Portishead to Pill. These works are required to be consented via a DCO, as provided for under the 2008 Planning Act. The DCO Scheme is 14km commencing at Portishead and terminating at Ashton Junction in Bristol, a short distance to Parson Street Junction where the branch line connects with the Bristol to Taunton Main Line. The proposed infrastructure will be sufficient to maintain an hourly freight train path in each direction between Royal Portbury Dock and Parson Street Junction, as well as providing capacity for the hourly / hourly plus passenger train service.
- 2.7 The DCO Scheme utilises the track bed of the former Portishead Branch Line Railway constructed in the late 1860s by the Portishead Pier and Railway Company and operated by the Great Western Railway until rail nationalisation. The railway closed to passengers in 1964 and the part of the railway between the former Portbury Station and Portishead was not transferred to Railtrack PLC on privatisation in 1993, having not seen trains since the early 1980s. Railtrack PLC and the Bristol Port Company restored freight services to the railway between Parson Street and Pill in 2001, with the Port constructing a new half kilometre connection from the original railway alignment (at a point known as Portbury Dock Junction) to the Royal Portbury Dock. The freight line from Pill to Parson Street is part of the national rail network owned and managed by Network Rail.



- 2.8 The 4.7 kilometres of dis-used railway between Pill and Portishead is owned by Network Rail and the Council. Network Rail owns the section between Portbury Dock Junction and Old Portbury Station and the Council owns the section from Old Portbury Station to Portishead, having acquired it from British Railways Board Residuary Limited in 2008. The land on which the railway will be constructed between Old Portbury Station and Portishead will be transferred by the Council to Network Rail, following construction. The benefit of the DCO powers required for the operation of the railway will be transferred to Network Rail. Appendix 1 shows an outline plan of the constituent parts of the DCO scheme.
- 2.9 The existing railway from Parson Street to Royal Portbury Dock is described as a Core Trunk Route within the Strategic Freight Network map annexed to the National Networks NPS. Work to construct the DCO Scheme will be carried out with possessions and blockades of the existing railway timed so far as is possible to minimise disruption to freight traffic on the existing railway. This will however necessitate construction work in the evening or at night on the existing railway, as well as at weekends.

#### The Estimated Cost of the Project

- 2.10 The estimated capital cost of the MetroWest Phase 1 is £116.4M. The DCO Scheme together with the associated permitted development works at Parson Street Junction and on the Down Relief Line (Phase 1B works) comprise of approx. £111M of the total project cost. The estimated capital cost of Phase 1A is £5.4M, for the Bathampton turnback, which can be implemented under Network Rail's permitted development rights.
- 2.11 Under the Department for Transport (DfT) current rules, promoters of rail enhancement projects must meet the cost of any revenue support during the first three years of operation. The overall Project position is that up to £5.4M of revenue support will be required during the first three years, however, further negotiations are needed with the DfT as some of these costs should be regarded as wider rail industry costs. An initial provision of £750,000 has been made within the Council's Medium Term Financial Plan (MTFP) for revenue spend from 2023-24 onwards. Further provision will be made within the MTFP for the balance when the negotiations with the DfT are concluded. While the DCO Scheme accounts for most of the capital cost of the Project, it performs very positively in respect of the revenue position. This is due to a combination of relatively low operating costs (only one train set is required) and the relatively higher fare yield (due to the distance of the two new stations from Bristol Temple Meads).
- 2.12 The DfT will need to decide before the end of 2019 the specification for the proposed extension to the Great Western Railway franchise, known as Direct Award 3. The proposed extension is to 2022 with an option to extend to 2024. The DfT has indicated that it will include the proposed MetroWest Phase 1 train service in Direct Award 3, but may require the promoting authorities to enter into a revenue support agreement directly with the department. Alternatively, the promoting authorities could negotiate and enter into a bi-lateral agreement directly with the incumbent train operator, Great Western Railways. The arrangements for the procurement of the train operator and train service do not need to be finalised until 2020, in the meantime engagement with Great Western Railways continues to be very positive.

## Project Objectives

- 2.13 The Project objectives are focused on providing a long term enhancement for the Portishead to Bristol corridor and the Severnside/Avonmouth to Bath corridor.

The principal objectives are:

- To support economic growth
- To deliver a more resilient transport offer
- To improve accessibility to the rail network
- To make a positive contribution to social well-being

The supporting objectives are:

- To contribute to reducing traffic congestion
- To contribute to enhancing the capacity of the local rail network
- To contribute to reducing the overall environmental impact of the transport network

- 2.14 The objectives are particularly relevant for persons of limited mobility or who do not have regular access to a car. The re-opening of the Portishead branch line will dramatically reduce journey times for the corridor which will not erode over time. The scheme will increase the number of people living within 30 minutes' travel time of key employment areas such as the Temple Quarter Enterprise Zone and the sub-region's Enterprise Areas. This will generate a series of wider economic benefits, and will increase business competitiveness, productivity and investment confidence. By constructing a new railway on the former trackbed and utilising the Portbury Freight Line, the DCO Scheme is efficient in terms of cost and land requirements. For further information about the scheme objectives refer to the Outline Business Case which is available at [www.travelwest.info/projects/MetroWest](http://www.travelwest.info/projects/MetroWest). Details about the scheme viability and scheme benefits are set out in section 6 of this report.

## Pre Application Consultation

- 2.15 As part of the formal pre-application requirements the Council prepared two Statement of Community Consultation and consulted in line with the provisions of the document, in accordance with the requirements of the 2008 Planning Act. It has also engaged in extensive "informal" consultation with affected stakeholders and interested parties.
- 2.16 Communities, stakeholders, land owners, statutory bodies and affected parties are required to be consulted during the pre-application stage. The project took the opportunity to undertake two stages of consultation. Stage 1 consultation on re-opening the Portishead Branch Line was undertaken between June and August 2015 and Stage 2 consultation was undertaken between October and December 2017, with an extension of time for a small number of statutory bodies into 2018. Stage 2 was the formal DCO consultation and this included statutory bodies, land owners, government agencies and departments, and parties directly affected by the proposals. Wider stakeholders including local community groups, non-statutory bodies and the wider public etc, were consulted in both Stage 1 and Stage 2, in accordance with the project's Statements of Community Consultation.
- 2.17 The response to the consultations was very high with almost 2,000 separate responses received over both stages and the level of support for the scheme is also very high with 95% of community respondents fully or mainly in support of the

proposals. A summary of responses to Stage 2 Consultation, is attached in appendix 12. Further information about the pre-application consultation is set out in section 14 of this report.

2.18 Following the formal consultation periods, the DCO Scheme proposals have been refined in light of feedback and wider going engagement with statutory bodies, land owners, government agencies and departments, and parties directly affected by the proposals. Key refinements to the scheme proposals in summary are:

- Provision has been included for works to the bus stop at Pill Memorial Club, Heywood Road/Lodway in Pill, to allow for mobility impaired customers to access the local connecting bus network and rail replacement bus services;
- Provision has been made for easier access to drains, rhynes and culverts for maintenance purposes;
- Proposals for relocating and protecting underground utilities have been amended;
- Engineering works and lineside equipment through the Gorge have been designed alongside engagement with bodies such as Historic England and Natural England to minimise impacts during both the construction and operational phases;
- Revisions to the proposed restrictions to on-street parking around the station sites in both Portishead and Pill to reduce the extent of the restrictions;
- Agreement in principle for the provision of parking permits to offset displaced on-street parking for the Marina Healthcare Centre, Harbour Road, Portishead;
- Revisions to the design of the scheme to reduce the impact on Bristol Port, particularly to reduce the extent of temporary and permanent land required from Bristol Port;
- A combined design with the National Grid for the Hinkley Connection DCO scheme in relation to temporary compounds, access and haul roads at Sheepway to co-ordinate land and timescale interfaces;
- Retained headroom for Quarry Underbridge number 2 for National Trust vehicles in the Avon Gorge through a revised design of works to the bridge;
- Refinements to Trinity Bridge and the surrounding area in Portishead including footpath works;
- Extension of the bridleway under the M5 Avonmouth Bridge, improving the network by creating a new link; and
- Changes to construction compounds to reduce land required from third parties.

#### Timetable for the DCO Scheme Process

2.19 Following the submission of the DCO application, which is scheduled for July 2019, the rest of the DCO process up to the making of the Order by the Secretary of State, if accepted, takes approximately 18 months. In parallel with this it will be necessary to progress GRIP 5 Detailed Design, through a GRIP 5 to 8 design & build contract. Following the anticipated receipt of the Order in early 2021, it will be necessary to complete GRIP5 including the final construction contract price for GRIP6-8. The Final Approval Business Case will then be completed and submitted to the partner co-funders, for decision making. The award of construction contracts is planned for autumn 2021. Allowing for the dis-charge of planning conditions, environmental consents & licences, re-locating protected species and servicing compulsory acquisition notices, the start of construction is scheduled for late 2021. Following the completion of construction and infrastructure commissioning and testing, the DCO

scheme is programmed to open in late 2023. The enhancement to the Severn Beach Lane and Bristol to Bath Spa Line is programmed to open in late 2021.

### Applying for the DCO

- 2.20 Re-opening of the Portishead Line requires powers to build and operate via a DCO. The works for the Severn Beach line and the Bath Spa to Bristol line fall within Network Rail's permitted development powers. The DCO process is front loaded with extensive pre-application requirements. Promoters have to achieve a relatively advanced stage of design in order to meet technical requirements including identifying all the land required permanently to operate the scheme, all the land needed temporarily to build a scheme and all land to be subject to new rights or temporary use of possession.
- 2.21 After the DCO application has been submitted the Planning Inspectorate have 4 weeks to decide if the application should be accepted for examination. If accepted there are prescribed maximum timescales for the examination (maximum 6 months from the Preliminary Meeting) the Panel's report (3 Months) and the Secretary of State's decision (3 Months). Added to this are the pre-examination notification requirements and post decision challenge period so the post acceptance process usually takes approximately 18 months. The examination is largely a written process, with the Panel asking questions of the applicant and interested parties in rounds of questions, but there will be a series of hearings into specific issues and topics, such as compulsory acquisition and the content of the draft DCO. There will also be Open Floor Hearings, where members of the public can make their views on the proposal known to the Panel.
- 2.22 All DCO stages have to be completed before the main construction works can commence. The DCO will be applied for by North Somerset Council on behalf of the project co-promoters, which are the Council and WECA.

### The content of the DCO

- 2.23 The DCO contains a number of provisions and is, if made, a statutory instrument that will appear on the statute book. The Order is made only after a panel appointed by the Secretary of State consider its merits and report to the Secretary of State, who will then consider the Panel's report before making a decision whether or not to make the Order.
- 2.24 The principal powers sought in the draft Order are:
- (A) powers to construct, maintain and operate the proposed railway and to implement the associated works such as diversion of Quays Avenue, other highway and public right of way works and provision of ecological mitigation works;
  - (B) works to the highway network including works within the street, temporary stopping up suspension of use of the streets, permanent closure of Quays Avenue and associated works for diversion of Quays Avenue;
  - (C) closure of user worked level crossings currently on the disused railway used for access across the railway;

- (D) the closure of a public footpath crossing the railway in Bristol City Council's administrative area, known as Barons Close or Ashton Containers crossing.
- (E) Compulsory acquisition of land including acquisition of freehold, new rights, extinguishment of existing private rights, acquisition of subsoil or air space and the temporary use of land for the construction and maintenance of the development. This includes the acquisition of a small area public open space to the south of Trinity School in Portishead, which is to be used to create new public rights of way and also for landscaping associated with the new pedestrian and cycle bridge over the Railway to replace an existing path that crosses the railway trackbed at ground level.

- 2.25 Other miscellaneous powers such as the removal of trees, power to prevent statutory nuisances leading to injunctive relief for those affected, procedures for the approval of the requirements (back into planning conditions) when applied to by the project for approval by the local planning authority and the entering into of agreements with NR.
- 2.26 Powers are also sought to dis-apply the existing byelaws of the North Somerset Levels Internal Drainage Board to allow the construction, maintenance and operation of the railway in a way that would otherwise be contravention of the Internal Drainage Board's byelaws and the provisions of the Party Walls etc. Act as they may apply in the vicinity of Pill Station and viaduct.
- 2.27 The powers sought will be for the Council, acting as DCO Scheme promoter on behalf of the four West of England Authorities and WECA. The powers to operate and maintain the new railway will be transferred to Network Rail, together with the land required for the operation and maintenance of the new railway. The Council will be responsible for compensation for land acquisition and the costs of impacts on statutory utilities' apparatus.

### **3. DESCRIPTION OF THE DCO SCHEME**

- 3.1 The DCO Scheme overall consists of 14 kilometres of former and existing railway between Portishead and Parson Street in Bristol, together with additional highway works, principally in Portishead. A simplified plan of the DCO scheme is attached in appendix 1, the draft Development Consent Order is attached in appendix 2 and the draft Works Plans are attached in appendix 3. The spine of the land required for the DCO Scheme; (the Order Lands), consists of the Bristol to Portishead Branch Line Railway that was first constructed in the 1860s. This land is owned by the Council from Portishead to the Old Portbury Station, with Network Rail owning the track bed from Portbury to Parson Street. From Portbury Dock Junction to Parson Street the railway is operational as a freight only line serving Royal Portbury Dock.
- 3.2 Running from Portishead to Ashton Gate, in summary the DCO Scheme comprises:  
*Portishead*
  - (i) The former railway at Portishead to the west of the existing alignment of Quays Avenue. This land will form one of two car parks associated with Portishead Station. The Order Lands also include Harbour Road and Phoenix Way as well as other parts of the local highway network where highway works may be carried out. A new pedestrian and cycle boulevard will lead west from the new Quays Avenue to the Portbury Ditch, where it will connect to an existing bridge

over the watercourse. A small area of land has been included in the Order Lands to the west of the Portbury Ditch to allow for the improvement of an existing footpath connection to the Majestic Wine car park.

- (ii) The Order Lands then comprise the land for the new Quays Avenue and the existing Quays Avenue. Quays Avenue will be diverted to the west, to allow the existing alignment to become part of the new Portishead Station, Station car park and a small public open space area. To the east of the new Quays Avenue there will be two footpath connections from Phoenix Way and the new Quays Avenue parallel to the railway to the new Trinity footbridge. Land to the north and south of Trinity footbridge is required to allow for improvements to the rights of way network and its facility.

#### *Portishead to Portbury Dock*

- (iii) The Order Lands principally comprise the existing railway (currently owned by North Somerset Council) together with land required temporarily for construction haul roads and ecological mitigation, to the north and south of the railway. A small permanent compound for Network Rail's operational use will be located on the north side of the railway at the Sheepway overbridge and the existing permissive cycle path diverted to the north to facilitate this. A new pond for newts will also be constructed in the Portbury Wharf ecology park and that area will be used temporarily for species translocation.
- (iv) South of the railway and north of the Portbury Hundred, and west of Station Road, Portbury, will be one of the principal construction compounds over which temporary powers will be sought. Temporary construction haul roads will connect to the compound in either direction on the south side of the railway alignment. A new permanent access from this area to Portbury Hundred is also proposed to allow for the replacement of the historic user worked level crossing over the railway at this location. North of the railway and south of Sheepway a field is proposed to be permanently acquired for ecological mitigation and enhancement works.
- (v) At the old Portbury Station, North Somerset Council's ownership ceases and the remainder of the railway land is owned by Network Rail. To the north and south of the alignment there is provision for construction compounds and haul roads together with works to the existing bridleway network which lies between the Bristol Port Company's land at Royal Portbury Dock and the railway. A small permanent access point will be enhanced at the Wessex Water pumping station on the Portbury Hundred, where the historic crossing of the railway formed by The Drove used to provide access to the land north of the railway.

#### *Easton in Gordano to Pill*

- (vi) To the east of Marsh Lane land is sought to be acquired from the Bristol Port Company on the alignment of the cycle path and bridleway on the northern side of the railway. This is to allow Network Rail to access the proposed new starter signal for the Royal Portbury Dock which will be located close to where the Port's railway passes under the M5. The route will also form a haul road during construction. A construction compound will be sited under the M5 Avonmouth viaduct. Permanent powers are then sought on the north side of the railway across the triangle of ecological mitigation land which lies between the Port's railway, the M5 and the Portishead branch. This will be to allow for the

extension of the existing bridleway from Marsh Lane, which currently ends under the M5 Avonmouth viaduct. The bridleway would be extended to meet the permissive path that runs between the M5 Avonmouth viaduct and Avon Road, Pill.

- (vii) To the south of the railway and west of the M5, a construction compound is proposed at Lodway Farm. This has the potential to be rail connected and may therefore be used for ballast reclamation and transportation. Land closer to Marsh Lane and the Residential area of Easton in Gordano will be used temporarily for species translocation.
- (viii) At Pill, a small area of land comprising Jenny's Meadow is sought temporarily to allow for the diversion of the National Cycle Route network close to the Avon Road/Lodway Close underbridge. Some of the garages at Avon Road are proposed for permanent acquisition to allow for the demolition and use for crane compounds to lift in a new bridge at Avon Road/Lodway Close. The existing overbridge at this location is single track only and needs to be replaced by a double track structure. This work also requires temporary vehicular access to a number of back gardens of residential properties in Lodway Close during the time the work to replace the bridge is being undertaken. Two tracks are required at this location to allow for parallel lines to run from this location to the proposed location of Pill Junction, between Pill Viaduct and Pill Tunnel. This length of parallel track provides a length of line for freight trains waiting to progress to Parson Street to be held outside of the Port's railway facility whilst passenger trains are occupying the section of railway between Ashton Junction and Pill.

#### *Pill Station area*

- (ix) In the vicinity of Pill Station, land has recently been purchased for a new car park on the former goods yard site. Additional land closes to the station at Monmouth Road is still to be acquired for the car park. As with the Portishead car parks, the car park will be retained by North Somerset Council, but an area of land at the north western end of the former yard will be transferred to Network Rail for a permanent maintenance compound and for a new Principal Supply Point building.
- (x) Along the southern boundary of the railway permanent new rights are proposed to install soil nails to make the railway cutting stable, under residential properties in Sambourne Lane and Hardwick Road. Temporary rights are also required to install new fencing at the rear of gardens in Sambourne Lane and Hardwick Road, along the boundary with the railway cutting. Powers of temporary possession are sought over a number of back gardens in Lodway Close to allow for construction access to replace the railway bridge which has a pedestrian underpass linking Lodway Close with Avon Road. The new bridge will be wider than the existing bridge to provide sufficient space for a second section of track through to Pill Viaduct. The footprint of the new bridge is entirely within the existing operational railway, on land owned by Network Rail.
- (xi) Pill station will be reconstructed as a single platform at the former station location, using the site of the former platform on the Sambourne Lane side of the station. No. 7 Station Road in Pill has been acquired by the Council. The existing building will be demolished and replaced by a vehicle drop off area and

blue badge car park, cycle parking and the new entrance area for the station. A ramp will lead down to the station platform.

- (xii) East of Pill Station is Pill Viaduct. The viaduct currently carries a single line. A second track will be installed over the full length of the viaduct. The viaduct and its western abutment require remedial works and temporary powers are included in the DCO to permit access by Network Rail to carry out repairs required for the addition of the second track. This includes access to residential properties at Star lane and to the land owned by Alliance Homes behind Pill Library, to enable the works to be carried out. A small temporary compound will be used next to Pill Library. Temporary use of land forming the part of Victoria Park adjacent to and underneath the structure of Pill viaduct will also be the subject of temporary powers in the DCO application
- (xiii) On Lodway, Pill near the junction with Station Road works are proposed to upgrade the existing bus stops to make them fully accessible for connecting bus services and for rail replacement services. This requires the acquisition of land from Pill Memorial Club to move the existing retaining wall at this location. An additional part of the Club's car park will need to be occupied as working space and as a compound during the works at this location.
- (xiv) Between Pill Viaduct and Pill Tunnel a new junction will be provided, where the lines from Portishead and the Port will join. To provide for maintenance access to the junction on foot and with small vehicles following construction, the Council proposes to grant Network Rail an access along the permissive cycle path from Ham Green to the land next to the location of Pill Junction, at Watch House Hill. This will allow Network Rail access at all times for van size vehicles to reduce the risk that trains are delayed as a result of points failures and for other operational maintenance purposes.
- (xv) On the opposite side of the railway at this location, the houses at Mount Pleasant and Eirene Terrace back on to a substantial embankment on which the railway runs. As with the cutting side at Sambourne Lane, earth stabilisation works are proposed here. Access to the rear gardens of the residential properties is proposed on a temporary basis to ensure the soil stabilisation work can be carried out efficiently and safely.

#### *Ham Green to Clifton Suspension Bridge*

- (xvi) To the east of Pill tunnel an area of permanent acquisition is proposed at Ham Green for a permanent maintenance compound. Additional land is also included for a temporary construction compound.
- (xvii) In the Avon Gorge, the railway is within the Avon Gorge Woodlands Special Area of Conservation (SAC), a European designated site to which the Habitats Regulations apply. Works within the Avon Gorge are limited, but include structural works to Quarry Underbridge 2 including removal of the bridge arch and replacing the bridge deck. A small temporary compound is proposed for the work required at this location. Minor works are also required to other bridges and retaining walls. Some sections of track, sleepers and ballast will need to be replaced and some geotechnical works are required on rock faces adjacent to the railway. Signalling and GSMR communication masts/aerials are required and the fencing needs to be replaced. For the works throughout the Gorge the Council is liaising closely with Network Rail, Natural England and the



relevant landowners to minimise impacts on the SAC and to provide a management plan for the SAC that will improve the conditions for the tree and plant species for which the area has been designated.

#### *Clanage Road to Parson Street*

- (xviii) In the City of Bristol, a permanent compound is sought, to be used for Network Rail's maintenance purposes, on land forming a private field used for parking, car boot sales and sports activities, between the railway and Clanage Road. Additional land is required at this location during construction, for a compound. The permanent compound will provide maintenance access for the railway in the Gorge, which is otherwise difficult to access and would also be used as an access for emergency services if required to access the railway due to an incident within the Avon Gorge.
- (xix) Permanent land and temporary possession powers are also sought in the City of Bristol at the Winterstoke Road/Ashton Vale Road area, to allow for alterations to the highway network including the proposed extension to the left turn lane from Winterstoke Road into Ashton Vale Road. It is also proposed that a pedestrian ramp be constructed parallel to the railway between Ashton Vale Road and the A370. At Ashton Vale Road part of the existing permissive path constructed by Ashton Vale – Temple Meads Metrobus scheme will be designated as a new public right of way to replace the Ashton containers (or Barons Close) public footpath level crossing.
- (xx) Finally, powers are sought over Freightliner Limited's facility at South Liberty Lane to install protective equipment and to make associated minor alterations.

#### *Existing Land uses*

- 3.3 Overall the areas of Order Land comprise disused railway and scrub (in the vicinity of Portishead) open space at Trinity School, temporary possession of parts of the Portbury Wharf Nature Reserve and agricultural land between Portishead and Pill for construction purposes.
- 3.4 In Lodway, Pill the back gardens of various residential properties will be affected by the acquisition of new rights or temporary possession. The Ham Green compound area is currently an area of pasture land and the land at Clanage Road is a private car park, market area and occasional sports facility. The land in the vicinity of Winterstoke Road is principally existing yard space for railway scrub land.

## **4. PRINCIPAL POLICY CONSIDERATIONS**

- 4.1 The MetroWest Phase 1 project is identified in the Joint Local Transport Plan 3 (JLTP3) and Joint Local Transport Plan 4 (consultation version) and North Somerset's Core Strategy as a priority for early delivery. Re-opening the Portishead line was also included in the 2007 Replacement Local Plan and successive Local Plans over a number of decades.
- 4.2 Following studies undertaken in 2012 and early 2013, the four West of England (WoE) Councils jointly launched the MetroWest Phase 1 Project. The overall MetroWest programme involves delivering targeted enhancements to the existing local rail network, in parallel with re-opening strategically important disused rail lines.

In recognition that not all the proposals can be delivered at once, the WoE Councils are taking a phased approach to delivery of the MetroWest programme, with Phase 1 identified by the WoE Joint Transport Board as its top priority, followed with delivery of Phase 2.

- 4.3 MetroWest Phase 1 comprises the reopening of the Portishead Branch Line Railway, as described in section 2 above, if powers are authorised by the Secretary of State by the DCO being made, together with local enhancements to the existing national railway network operated by Network Rail Infrastructure Limited (NR).
- 4.4 In December 2014 the Department for Transport published its 'National Policy Statement for National Networks'. The National Policy Statement (NPS) is underpinned by legislation (the 2008 Planning Act) and sets out the Government's priorities and policy direction for the national road and rail networks. The NPS sets out the need for substantial further investment in the rail network as a result of sustained increasing demand for both passenger and freight train services over the last two decades. The NPS states that delivering Nationally Significant Infrastructure Projects (NSIPs) will play a key part of the strategy for ensuring the national road and rail networks have sufficient capacity to meet the increasing demand.
- 4.5 The Secretary of State will use the NPS as the primary basis for making decisions on applications for a Development Consent Order for NSIPs. MetroWest Phase 1 is an NSIP and requires a Development Consent Order.
- 4.6 The National Networks NPS (at Page 9) summarises the need for additions to national networks as:

***Government's vision and strategic objectives for the national networks***

*The Government will deliver national networks that meet the country's long term needs; supporting a prosperous and competitive economy and improving overall quality of life, as part of a wider transport system. This means:*

- *Networks with the capacity and connectivity and resilience to support national and local economic activity and facilitate growth and create jobs.*
- *Networks which support and improve journey quality, reliability and safety.*
- *Networks which support the delivery of environmental goals and the move to a low carbon economy.*
- *Networks which join up our communities and link effectively to each other.*

- 4.7 Paragraph 2.38 of the National Networks NPS deals with additions to the national rail network. It states:

*The Government will therefore consider new or re-opened alignments to improve capacity, speed, connectivity and reliability.*

- 4.8 The economic and business case viability for the DCO Scheme is also a critical consideration for the Council and the Secretary of State, as is explained in the National Networks NPS at paragraph 4.5. The scheme viability is dealt with in section 6.
- 4.9 Appendix 4 to this report provides a detailed analysis of the DCO Scheme against the policies set out in the National networks NPS. The considerations are relevant for

members both in deciding whether the DCO should be applied for in the round, and also in considering the compelling case for seeking powers of compulsory acquisition. This is explained in more detail in section 9.

- 4.10 Members are recommended to undertake both strands of analysis and consideration in the context of how the Secretary of state will address the decision making process, as described in paragraphs 4.3 and 4.4 of the National Networks NPS:

*4.3 In considering any proposed development, and in particular, when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State should take into account:*

- its potential benefits, including the facilitation of economic development, including job creation, housing and environmental improvement, and any long-term or wider benefits;*
- its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.*

*4.4 In this context, environmental, safety, social and economic benefits and adverse impacts, should be considered at national, regional and local levels. These may be identified in this NPS, or elsewhere.*

- 4.11 Members can carry out this exercise by reference to the policy considerations set out in appendix 4 and also the application of local planning policy as set out in the Council's development plan, which is discussed in the following section.

## **5. THE LOCAL PLANNING POLICY POSITION**

- 5.1 Section 4 of this report provides background to the National Networks NPS and explains its primacy in the decision making for the Secretary of State when considering the DCO scheme, in accordance with S104 of the Planning Act 2008. The provisions of the local development plan documents are material considerations both for the Council in deciding to submit the application for development consent and also for the Secretary of State when determining whether or not to make the DCO.
- 5.2 The Council's own development management policies, adopted in July 2016, safeguard the Portishead Branch Line Railway (Policy DM22). Land for the stations and associated car parking at Portishead and Pill is also included in the policy.
- 5.3 Policy DM25 relates to proposals that would impact on public access and rights of way. The policy requires that:

*Any replacement or diversion of existing facilities will be no less convenient, safe or aesthetically attractive and will be of equal or broader legal status to those facilities being replaced.*

The proposals to enhance the foot and cycle path network in the vicinity of Portishead station accords with this policy, as does the provision of the new pedestrian and cycle boulevard on the former trackbed of the disused railway, leading west from the new station towards the town centre.

- 5.4 Land at Court House Farm, Easton in Gordano is subject to policy DM49 safeguarding the land for Port uses, but with the proviso that such use does not prejudice the future development of a park and ride facility for associated with the railway. The DCO Scheme proposals do not infringe that policy.

The National Planning Policy Framework (NPPF) July 2018

- 5.5 The NPPF is also material to the consideration of the proposed DCO. Part 9 deals with promoting sustainable transport. The NPPF calls for opportunities to pursue public transport as well as walking and cycling (para 102(c)).
- 5.6 Paragraph 110 calls for pedestrian and cycle movements to be given first priority together with facilitating access to high quality public transport, with appropriate facilities that encourage public transport use. Development should also address the needs of those with disabilities and reduced mobility.
- 5.7 The DCO Scheme therefore substantially accords with local and national planning policy, as well as with the national Networks NPS.

**6. DCO SCHEME VIABILITY AND FUNDING POSITION**

Scheme Viability

- 6.1 The overall project has a benefit to cost ratio of 3.1:1, this represents high value for money under the DfT's technical guidance. A summary of the DCO scheme quantified benefits is shown in table below, alongside the benefits for the whole project. In addition to these benefits are wide ranging unquantified social wellbeing benefits, across the local demographic. As shown in the table, the DCO scheme will yield substantial added value for the local economy in terms of GVA and job creation. It will support growth of the Temple Quarter Enterprise Zone and the Enterprise Areas across the sub-region, increasing the size of the skilled workforce within a 30 minute commute of major employers. Detailed information about the scheme viability is set out in the project Outline Business Case, which was completed in December 2017. The Outline Business Case is available at [www.travelwest.info/projects/MetroWest](http://www.travelwest.info/projects/MetroWest). An update to the Outline Business Case is set out in an addendum which is attached to this report in appendix 5.

<b>Description</b>	<b>Whole of MetroWest Phase 1 Severn Beach Line, Bath Spa Line &amp; Portishead Line</b>	<b>Portishead Line (DCO Scheme)</b>
Modal Shift	Reduction of 580 car trips per day in the opening year, increasing to 890 less car trips per day by 2036	Reduction of 294 car trips per day in the opening year, increasing to 415 less car trips per day by 2036
Job Creation	514 net new direct permanent jobs + temporary jobs during construction	207 net new direct permanent jobs + temporary jobs during construction
Gross Value Added (GVA) to the economy	£31.87 PA in the opening year, totalling £271M discounted GVA during the first 10 years. Plus a	£12.95 PA in the opening year, totalling £139M discounted GVA during the first 10 years. Plus a

	further £59.27M during construction	further £54.78M during construction
Forecast Rail Passenger demand & number of train sets	2021: 958,980 passenger trips 2036: 1,295,103 passenger trips 6 train sets (including 2 existing train sets on the Severn Beach Line)	2021: 377,021 passenger trips 2036: 509,167 passenger trips 1 train set
Population Benefiting	Will upgrade the existing train service at 16 existing stations across three rail corridors, directly benefiting 180,000 people within a 1km catchment and bring an additional 50,000 people within the catchment of the 2 new stations. The total population benefiting from the project is 230,000.	Will bring an additional 50,000 people within the immediate catchment of the 2 new stations at Portishead and Pill

### The Funding Position

- 6.2 Following ongoing engagement with the DfT since late 2017, the Secretary of State for Transport rh Chris Grayling MP visited Portishead on 4<sup>th</sup> April 2019 and met with representatives of the Council and WECA. On the 5<sup>th</sup> April, the Secretary of State confirmed by letter that he would provide £31.9M, on the basis that a further £15M is allocated locally, below is an extract from the letter”

*“As you know, improving rail services for the people of the Bristol area is important to this Government. I firmly support MetroWest and consider its successful delivery, including the Portishead element, a priority in Control Period 6.*

*I welcome your effects to identify local funding options and the further £15M you think is possible through the Economic Development Fund mechanism, reducing the funding gap from £46.9M to £31.9M. I also note the consideration that has been given to light rail and tram-train options and that the MetroWest scheme will be future proofed to facilitate these.*

*I am content to provide the further £31.9M required. However, this is on the basis that the £15M of local funding can be secured as you set out and that MetroWest passes successfully through the Department’s Rail Network Enhancements Pipeline (RNEP) process.”*

- 6.3 The Council agreed to allocate a further £15M at its meeting of 12<sup>th</sup> February 2019. The spend of the £15M is scheduled for 2023/24, and this allows time for further optimisation of the Councils’ capital programme. This now means that funding for the project has been allocated. The DfT’s Rail Network Enhancements Pipeline (RNEP) process is essentially a technical approval process for DfT funded projects, based on the Department’s WebTAG (internet based Transport Appraisal Guidance), through a three stage business case process. As the WoE LEP also require projects to be fully WebTAG compliant, the RNEP process is not expected to increase the quantum of technical work, however it entails five stages gates, which for each will

the deployment of resources to achieve DfT approval.

- 6.4 As set out in section 2 of this report, under the Department for Transport (DfT) rule's, promoters of rail enhancement projects must meet the cost of any revenue support during the first three years of operation. The overall Project position is that up to £5.4M of revenue support will be required during the first three years, however, further discussions are needed with the DfT as some of these costs should be regarded as wider rail industry costs.
- 6.5 As the project is utilising capital funding there remains a risk of revenue reversion should the project not be delivered. Delivering part of the project (1A), along with a completed DCO, will partially mitigate this risk. It is not possible to quantify the exact sums at this stage, as it would depend on the proportion of the project delivered. The cost and risk sharing arrangements between the Council and WECA are set out in an Initial Promotion Agreement. This agreement has been updated to cover the development of the scheme up to the completion of Final Approval Business Case, including completion of statutory processes and procurement of the scheme construction. The Council authorised officers to finalise the agreement and enter into it at the Council meeting of 12<sup>th</sup> February 2019. WECA are in the process of seeking authorisation to enter into the agreement and this is to be decided by the WECA Committee on 14<sup>th</sup> June 2019.

## **7. CONSIDERATION OF HIGHWAYS IMPACTS INCLUDING ON PUBLIC RIGHT OF WAY AND PERMISSIVE PATH NETWORK**

- 7.1 This section of the report details the highway interventions sought in the draft DCO. They have been discussed with the Council's highway officers and open spaces team. Discussion has also taken place with the highway team at Bristol City Council. In addition to the interventions described below, where the DCO Scheme is looking to close private level crossings along the route of the DCO Scheme. Where it is not clear if any residual highway rights exist in addition to the private rights to cross the railway on the level that attach to land then the powers for the closure will comprise both private law rights and any highway rights that may exist. A list of Affected Highways, Alterations to Public Rights of Way and Traffic Regulation Orders, is attached in appendix 6.

### Highway Works at Portishead

- 7.2 The principal highway works in North Somerset proposed in the DCO Scheme is the realignment of Quays Avenue in Portishead to the west of its current alignment, to allow additional space for the new station. Following consultation in 2015 the site now proposed for the station was selected as the most appropriate, following indication from the Office of Rail and Road that a level crossing over Quays Avenue would not be acceptable.
- 7.3 Quays Avenue will connect to Phoenix Way and Harbour Road at a relocated roundabout west of the current roundabout then will be diverted on a new route closer to Harbour Crescent. The existing alignment will be stopped up and used for a new car park, the new station and an area of landscaping south of the new station. Tying in works on the highway network are also required and a widened footway and cycle way will be provided from the new Quays Avenue Junction west along the south side of Harbour Road to improve connectivity between the station and the town centre.

### Works to the Path Network in Portishead

- 7.4 A new boulevard will be provided for pedestrians and cyclists from Majestic Wine's car park to the re-aligned Quays' avenue, to provide a link from the new station towards the town centre.
- 7.5 In the vicinity of Portishead Station new public rights of way are proposed to the north and south of the railway to connect to Quays Avenue and Phoenix Way with the new Trinity footbridge. In addition, the existing informal path between Galingale Way and Tansy Lane will be included in the DCO Scheme to become public rights of way and forming part of the Council's right of way network. The existing crossing over the railway by Trinity School, at ground level will be replaced by a new footbridge. During construction works a series of temporary diversions will provide a route from Galingale Way to the Trinity School.
- 7.6 Overall the additional network of paths in Portishead will provide for connectivity to the new station and not adversely impact on the existing network for non-motorised modes of travel.

### Sheepway to Pill

- 7.7 In the vicinity of the overbridge carrying Sheepway over the railway, temporary and permanent diversions of the permissive path that forms part of the National Cycle network connecting Portishead with Sheepway is proposed. The route will be moved to the north to allow for the construction compound at Sheepway and then relocated closer to the railway on a permanent alignment when the permanent compound for Network Rail is established.
- 7.8 The network of bridleways between Sheepway and the M5 run parallel to the Port's fence will be affected by a number of temporary and permanent provisions. At the moment the cycle network passes underneath the highways of Royal Portbury Dock Road and Marsh Lane using the railway alignment under licence from Network Rail. The same applies at the M5, where the railway tunnel under the M5 is used for pedestrians and cyclists. In all three cases the route is permissive only. The licence will be ended prior to construction works commencing for the DCO Scheme and users will not be able to pass under the highways at these locations during construction. In all three cases the routes are proposed to be restored by Network Rail following construction, again on a permissive licence rather than as a public right of way. It is proposed that works are carried out at Royal Portbury Dock and Marsh Lane crossings to improve the existing bridleway networks. Additional minor permanent alterations are proposed at both overbridges.
- 7.9 During construction the bridleway between Marsh Lane and the M5, which is also used for cyclists, will be closed as this will be a construction haul route and provide access to the proposed compound under the M5 and the compound at Lodway. A temporary diversion over the highways of Marsh Lane, Church Lane and Debecca's Lane, or the Breaches and Trinder Road, Easton-in-Gordano, will be signposted. For the cycle route over the M5 bridge and then reaches Pill, a small temporary diversion will be provided at Avon Road, across the existing open space known as Jenny's Meadow.
- 7.10 During construction works, the footpath between Lodway Close and Avon Road, Pill will be closed to allow for a new bridge to be put in place. The route will be restored for public use when the new bridge has been installed.

- 7.11 It is also proposed that a new right is granted to Network Rail to use the permissive path that runs through Watch House Hill from Ham Green, to allow an emergency and maintenance access from the Watch House Hill open space to the railway at the western portal of Pill tunnel.

#### Works to Road over Rail Bridges between Sheepway and Marsh Lane

- 7.12 Essential safety works are required to four road bridges over the dis-used railway:
- Sheepway Bridge
  - Old Portbury Station Bridge
  - Royal Portbury Dock Road Bridge
  - Marsh Lane Bridge

The works include enhancing the bridge parapets, installing vehicle restraint systems to reduce the risk of vehicle incursion on the railway, repair to the integrity of one of the Royal Portbury Dock Road embankments and other minor repair works to all four structures.

- 7.13 These works need to be undertaken by a highway contractor in advance of the main railway construction works, to avoid delay to the overall programme, as it would not be practical to have separately commissioned highway and railway contractors on site at the same time. Furthermore, undertaking these minor works ahead of the railway works will be cheaper because there are no railway possession costs while the railway remains dis-used. These works do not require any planning consent. Authorisation is sought for the Director of Development and Environment to procure these works at an estimated cost of up to £400,000.

#### Highway Works in Bristol

- 7.14 The previous two train per hour proposals for the DCO Scheme included a new access road to the Ashton Vale Industrial Estate to allow the existing Aston Vale Road Level Crossing to be closed. Additional work by the consultant team has shown that the current junction and level crossing can continue to function similarly to how it currently operates, over the course of a typical day. With some improvements to the Ashton Vale Road/Winterstoke Road junction, including alterations to the traffic light operating system and the provision of an extension to the left turn lane from Winterstoke Road into Ashton Vale Road delays due to the level crossing operating can be effectively managed. Accordingly, and with the agreement of Bristol City Council as highway authority, works to the Winterstoke Road junction are proposed. Network Rail has assessed the operation of the level crossing and is content that the crossing can remain.
- 7.15 The public footpath in Bristol, known as Ashton Containers crossing or Barons Close crossing, is proposed to be permanently closed, with a diversion being provided on the AVTM MetroBus (Route M2) access road north to Ashton Vale Road for pedestrians to use the much safer all-purpose level crossing at Ashton Vale Road.

## **8 TRAFFIC REGULATION ORDERS**

- 8.1 As well as modifications to the highway network, the draft DCO proposes powers to impose traffic regulation on the existing highway network, both in North Somerset and in Bristol. The powers would be promoted in consultation with the local traffic authorities.



- 8.2 A number of traffic regulation orders proposed would be temporary in duration and allow for restrictions on parking during construction, to facilitate access by construction vehicles to the various access points required for the DCO scheme.
- 8.3 At Sheepway, temporary traffic control is proposed to restrict the current 40mph speed restriction further, to 30mph. This would extend from close to Moor Gate, north west to Sheepway Gate Farm. On Portbury Hundred a ban on right turns will be imposed in to and out of the new access provided to replace an occupation crossing over the disused railway that currently allows access from the field to Sheepway.
- 8.4 Within Pill a number of temporary traffic regulation activities were proposed to provide for access by construction traffic to the principal construction locations at Avon Road, Pill Station, the former railway yard at Pill and Pill Viaduct. Star Lane may need to be temporarily closed for safety reasons whilst works are carried out to Pill Viaduct above. In addition, temporary powers are sought along Macrae Road to allow for plant and machinery to access the new compound at Ham Green. Temporary closures may be imposed on access to the River Avon tow path, again for safety reasons during construction.
- 8.5 Permanent traffic regulation orders are proposed in Portishead on sections of Harbour Road, Phoenix Way and Quays Avenue to prohibit waiting at any time and to restrict parking to a maximum of 2 hours on a section of Haven View. The existing 20mph speed restriction on Phoenix Way will be extended toward the roundabout with Quays Avenue, due to the realignment of Quays Avenue and the extension of Phoenix Way.
- 8.6 For the access to the construction compound at Portbury Hundred, west of Station Road, Portbury, construction traffic will be restricted to "left in – left out" movements, to prevent construction traffic crossing the opposing flow of traffic when entering or leaving the site. This restriction will remain on a permanent basis, as this will remain the only access to this field. The existing access to the field, will be severed by the reopening of the rail line.
- 8.7 Permanent traffic regulation orders are proposed in Pill and Ham Green to restrict waiting at any time on sections of Station Road, Monmouth Road, Chapel Row, Myrtle Hill, Macrae Road, The Sanctuary, Hart Close gyratory, Fitzharding Road and the junction of Macrae Road with Ham Green.
- 8.8 In Bristol, the existing parking restrictions on Winterstoke Road will be extended along the new left turn lane on Winterstoke Road (filtering into Ashton Vale Industrial Estate).

## **9. THE NEED FOR COMPULSORY ACQUISITION POWERS**

- 9.1 The application for a DCO will include powers to acquire interests in land compulsorily. This will apply principally to land in the Council's administrative area but also to land in the city of Bristol where required for the DCO Scheme. The lands in which powers are sought are shown in the draft Land Plans attached in appendix 7. A summary of land requirements is attached in appendix 8.
- 9.2 Powers sought include:

(i) Permanent acquisition of freehold interests by the Council;

(ii) permanent new rights over land to be held by the Council or by Network Rail, for instance the right to install and retain soil nails under gardens at Sambourne Lane in Pill;

(iii) Temporary exclusive possession of land for construction purposes, for instance the proposed temporary compounds at Portbury Hundred, Lodway and under the M5 Viaduct; and

(iv) temporary use of land on a non-exclusive basis, such as using the paths at the Portbury Wharf Ecology Park for access to ecological mitigation works.

- 9.3 In addition, powers are sought to extinguish existing rights in land subject to compulsory acquisition or to extinguish or suspend existing rights in land which will be incompatible with the exercise of the rights sought in the DCO. Where land is to be occupied temporarily during construction, existing rights in the land can be suspended by the Council.
- 9.4 Most of the land required for the DCO Scheme is already in the ownership of the Council or Network Rail. At Portishead some land has been acquired for the diversion of Quays Avenue. In addition, parcels of land at Pill have been acquired for the new station entrance and the new car park on Monmouth Road. Despite this success in land assembly, it is anticipated that without compulsory acquisition powers the project will not proceed in a reasonable timeframe.
- 9.5 Government guidance on compulsory acquisition for DCOs is provided in the form of the Secretary of State's guidance on compulsory acquisition powers in DCOs published in September 2013, as well as the Ministry of Housing and Local Government guidance published in October 2015.
- 9.6 The Guidance on compulsory acquisition confirms that applicants may make provision for such powers in their draft DCO. Reference is made to the statutory tests in S122 of the Planning Act 2008 Orders seeking compulsory acquisition powers will only be authorised if the Secretary of State is satisfied that:
- the land is required for the development to which the consent relates, or is required to facilitate, or is incidental to the development, or is replacement land given in exchange under s131 or s132 of the Planning Act 2008; and
  - there is a compelling case in the public interest for the compulsory acquisition.
- 9.7 Members will note that the land required for the project is largely in the ownership of the Council or Network Rail and formed the previously operating railway (or is part of the existing rail network). Additional land has been included only where necessary, for the diversion of highways or the provision of appropriate accesses for modern railway as specified by Network Rail. Where appropriate, temporary powers or new rights only have been sought.
- 9.8 All of the land is required for the proposed development or to facilitate it. All the third party landowners have been identified and have been contacted as part of the formal stage 2 DCO consultation. The land required is shown in the draft Land Plans and the summary of land required attached in appendix 8 and 9. The total estimated cost of

land acquisition is £3.451M which includes the cost of land already acquired by the project and risk. In summary, the additional land is required for:

- (i) part of the land required for the new Portishead Station, car park, foot and cycle paths and amenity areas in the vicinity of the new station;
- (ii) the new footbridge to the south of Trinity School to replace the existing flat crossing that has become established since the railway fell into disuse;
- (iii) haul roads between Portishead and Portbury for construction purposes;
- (iv) temporary powers and new rights are sought over the Portbury Wharf Nature Reserve area to allow for ecological mitigation
- (v) a new permanent compound is required by NR to the north of the railway at Sheepway overbridge. This requires a small permanent diversion, as well as a temporary diversion, of the permissive path that lies immediately north of the railway which forms part of the National Cycle Group network;
- (vi) a construction compound is proposed between the railway and Portbury Hundred, to the west of Station Road, Portbury;
- (vii) land is also sought permanently and temporarily, as well as new rights, in the vicinity of the Port of Bristol Company's Royal Portbury Dock to allow for construction compounds at Lodway Farm and under the M5 Avonmouth Bridge. Some land is required permanently for works to the public bridleway that runs along the Port's boundary and new rights are sought over some of the Port's land to allow for a new railway signal to be installed at the railway dock gate.
- (viii) at Pill the area of garages at the end of Avon Road are to be acquired and demolished to allow for a crane to operate to install a replacement bridge to carry the railway over the public footpath that connects Avon Road with Lodway Close, Pill.
- (ix) In Pill new rights are sought to install soil strengthening works under numerous gardens at Sambourne Lane and Hardwick Road. In addition, temporary access is required to a number of back gardens at Lodway to allow for the reconstruction of the Lodway Close/Avon Road overbridge as well as over sails, soil nails and to provide a safety cordon around the works on the railway. Temporary use of back gardens in Eirene Terrace and Mount Pleasant are also proposed to ensure work can be safely carried out on the railway embankment above the back gardens.
- (x) A new compound is proposed at Ham Green to provide access to Pill Tunnel.
- (xi) In Bristol a new access compound is proposed at Clanage Road to provide guaranteed access for maintenance and emergency purposes to the railway through the Gorge.
- (xii) Also in Bristol temporary and permanent acquisition is proposed to allow for works to Winterstoke Road at its junction with Ashton Vale Road to provide additional length of left turn lane in to the Ashton Vale Industrial Estate.

*Extinguishing rights to use occupation and accommodation crossings.*

9.9 Powers to extinguish existing accommodation and occupation crossings over the railway alignment are sought. These crossings mainly originate from when the railway was constructed, to provide farmers with access to fields that would otherwise have been severed by the railway. At Portbury Hundred a new access will be provided to replace the access from Station Road Portbury, to the field that will be used as a construction compound. Two crossings at Sheepway Gate Farm will be closed and not replaced, with improvements instead being made to the access to the severed fields from Sheepway, utilising the existing highway overbridge. It is not believed that any of the other crossings proposed to be extinguished are currently in use and no proposal to replace them is included in the DCO Scheme.

9.10 The level crossings to be closed are described below:

- (i) historic maps show a crossing existed by the Wessex Water pumping station in Portishead. No evidence remains on the ground but the opportunity will be taken to remove any residual rights that remain.
- (ii) South of Trinity School between Galingale Way and Tansy Lane – to be replaced by a new bridge. Any public rights of way will also be extinguished;
- (iii) The former access road known as Moor Lane, north of Sheepway and south of Marjoram Way, Portishead. Any public rights of way will also be extinguished;
- (iv) Two accommodation crossings at Sheepway Gate Farm. No replacement will be provided but works to improve an existing access from Sheepway are proposed;
- (v) Elm Tree Farm, Portbury. A new access to the field that benefits from this level crossing will be provided, located on the Portbury Hundred.
- (vi) The former crossing of the Drove, from Portbury Hundred North to the area now occupied by the properties associated with Royal Portbury Dock. Any public rights of way will also be extinguished;
- (vii) Four crossings between Old Portbury Station and the M5, none of which appear to be in use. One is known as Portbury No 3 crossing, one benefitted Court House Farm and 2 were provided for the benefit of Manor Farm, Eason in Gordano. None appear to have public rights attached to them and no replacement is proposed for any of the crossings.
- (viii) East of the M5 is evidence of a former crossing for the benefit of Lodway Farm. This will be extinguished and no replacement right will be provided. No public rights are presumed to exist at this location.

9.11 Beneficiaries of the rights extinguished are entitled to compensation for the reduction in value of their land resulting from the right being extinguished. Powers are also sought to affect the rights and apparatus of statutory undertakers. There are some 200 crossings or proximity situations along the route of the Portishead branch line. Whilst the vast majority of undertaker's apparatus will remain in situ it is essential that the DCO Scheme includes powers to implement works to alter or divert statutory undertakers' apparatus where this is necessary. Outline design for protective works to utilities has been undertaken (known as c3 design). Details design (known as c4) will be progressed in parallel with the detailed highways design.

- 9.12 All statutory undertakers have been contacted and the programme of full engagement with statutory undertakers has been embarked on. Where relevant, protective provisions will be included in the DCO to protect the interests of the relevant statutory undertaker. A summary of the principal liabilities arising from the Project is attached in appendix 13, which is not for publication by virtue of paragraph 3 of Part 1 of schedule 12A of the Local Government Act 1972. Authorisation is sought for the Director of Development & Environment to enter into agreements and agree protective provisions with statutory undertakers including provision for expenditure on the costs for drafting the agreements and activities reasonably required for the successful implementation of the DCO Scheme, at an estimated cost of up to £120,000. The statutory undertakers include Western Power Distribution, Openreach, Bristol Water, Wessex Water, Wales & West Utilities, CLH Pipelines and National Grid.
- 9.13 It is likely that some of the protective works to utilities will need to be undertaken before the start of the main railway works, (following completion of the utilities detailed design), in order to avoid delay to the programme. In such case, a separate authorisation will be sought for the delivery of these utility works in due course.

### **Open Space Land**

- 9.14 Open space land holds special status under the Planning Act 2008 with additional procedures required, under sections 131 and 132 of the Planning Act 2008. A DCO application proposing the acquisition of open space land is potentially subject to Special Parliamentary Procedure (consideration of the Order by a Committee of both Houses of Parliament) if a certificate is not issued by the Secretary of State when deciding to make the Order, to say that Special Parliamentary Procedure is not required.

### Open Space at Portishead

- 9.15 On the north and south side of the railway in the vicinity of Trinity School, open space has been provided by the developers of the Ashlands and The Vale Estates. This land is required to be transferred to the Council pursuant to the relevant planning agreements for those developments but the transfer has not yet taken place. The land is needed to provide the additional footpath and cycle path network proposed in the vicinity of Trinity School and connecting to Portishead Station.
- 9.16 In addition part of the open space in this location will be used for ecological mitigation activities (such as translocation of species) and also as compound and working space on the Tansy Lane side, for the construction of the new bridge over the railway at this location. Temporary possession of open space does not lead to the requirement for exchange land, as the land is simply occupied on a temporary basis and then reverts to its previous use.
- 9.17 Additional planting as screening for the new bridge will be provided on the land already in the Council's ownership or to be acquired pursuant to the DCO process as part of the mitigation to screen the bridge at Tansy Lane. For the land on the south side of the railway, north of Galingale Way, where land comprising open space is proposed to be acquired no exchange land will need to be provided because the total area of land is below the deminimis threshold. Overall, in Portishead there will be no net reduction in publicly available land as a result of the project that the status of some of the land will be changed from open space to public right of way.

### Portbury Wharf Ecology Park

- 9.18 The Portbury Wharf Ecology Park has also been provided as open space by the developers of the former Ashlands industrial area. As with the land at Tansy Lane it is due to become part of the Council's estate in due course but the relevant transfers have not yet taken place. In this location land is required on a temporary basis for works to the railway including drain and culvert clearance and erection of fences. Translocation of species is also proposed in this area.
- 9.19 In addition new rights are sought to create and maintain a new pond as part of the ecological facilities within the ecology park.

### Open Space in Pill

- 9.20 Three areas of open space in Pill are affected by the proposals. Land at Victoria Park, Pill lies beneath and to the sides of the existing Pill Railway Viaduct. The areas underneath the arches and on either side of the arches are open space and form a town green being part of Victoria Park. The land is in the Council's freehold ownership and is subject to rights of access in favour of Network Rail. It is proposed that, for completeness, the Order includes powers of temporary use of land parallel to the viaduct and underneath the viaduct arches to allow Network Rail access to carry out remedial works on a temporary basis to the structure of the viaduct. No permanent additional rights nor freehold acquisition are proposed and therefore the requirement to provide exchange land is not engaged.
- 9.21 It is proposed that Network Rail will receive a new right of way over the permissive cycle path that extends from the car park on The Green at Ham Green parallel to the railway into the Watch House Hill open space. The route will be used for operational maintenance purposes for the new Pill junction that will be located above Pill Methodist Church. The new right is proposed to be granted to reduce operational perturbation due to the lack of access for maintenance to Pill junction. No additional physical works are proposed along the cycle path and access will predominantly be on foot. As the access will be exercised on the existing permissive path and without closing the permissive path to the public, it is not proposed that any exchange land is offered for the grant of this new right and it will be submitted to the Secretary of State that exchange land is unnecessary in this circumstance.
- 9.22 Jenny's Meadow is an area of amenity and ecological habitat land at the western end of Avon Road, Pill, adjacent to the River Avon. the Council proposes to lay temporary matting on the existing path from the terminus of Avon Road west then south to the access road providing a cycle and maintenance vehicle route from Avon Road to the M5 Avon Viaduct. No permanent additional rights nor freehold acquisition are proposed and therefore the requirement to provide exchange land is not engaged.

### **Funding and Compulsory Acquisition**

- 9.23 The Council needs to consider whether the application for compulsory powers should be made, on the basis there being a compelling need in the public interest for such powers. Part of the compelling case includes the availability of funding both for compulsory acquisition compensation and for constructing the DCO Scheme itself and associated with that funding, whether there is a reasonable prospect of the DCO Scheme proceeding.

- 9.24 A funding statement must be provided with the application to explain how funding is likely to be secured. The panel appointed by the Secretary of State to consider any accepted application, and indeed the Secretary of State himself, will want to be assured that funding is in place to cover compulsory acquisition liabilities (including statutory blight) and overall funding will be available to allow the DCO Scheme to proceed.
- 9.25 Members should consider whether they are now satisfied that sufficient funding is in place to meet compulsory acquisition liabilities, including the liabilities for statutory blight if blight notices are served by owner occupiers of lands affected by the Order. It should also be noted that cost liabilities may arise if the Secretary of State decides to refuse to make the Order.
- 9.26 The availability of compensation following compulsory acquisition is also part of the package of Convention Rights that apply and should also be considered by members before resolving to seek compulsory powers. The relevant Convention Rights are discussed in the following part of this report.

### **Human Rights impacts – the Convention Rights engaged**

- 9.27 The Human Rights Act 1998 incorporated into UK domestic law the European Convention on Human Rights (**the Convention**). The HRA 1998 makes it lawful for a public body to act in contravention of the Convention. The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of individuals (including companies). In resolving to submit the DCO the Council has to consider the rights of those affected, principally property owners under the Convention. The relevant provisions are:
- (A) Article 1 of the First Protocol – this protects the rights of the owner and the peaceful enjoyment of possession – no-one can be deprived of possession except in the public interest and subject to relevant international and national law. This includes the principle that fair compensation would be available to a dispossessed owner.
  - (B) Article 8 – this protects the private and family life, home and correspondence. No public authority can interfere with these works except in accordance with the law or necessary in the interest of public security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime or for the protection of health or morals or the rights or freedom of others;
  - (C) Article 6 – the right to a fair hearing;
  - (D) Article 14 – the enjoyment of the rights of freedoms in the convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion – nor social origin, associated national minority, property, birth or other status.
- 9.28 In the case of each of the above Articles (and the convention in general) the Council must be conscious of the need to strike a balance between the rights of the individual and the interests of the public. In the light of the significant public benefit that will arise from MetroWest Phase 1 it is considered appropriate to apply for the DCO and seek compulsory acquisition powers.

- 9.29 In relation to Articles 6 and 14, it is not considered that any unlawful interference with an individual's Convention Rights will occur as the interference will be in accordance with the law and, where property interests are affected directly, the Compulsory Purchase Code will apply. For Article 1 of Protocol 1, the Council must satisfy itself that funds for compensation for dispossessed owners is or will be available before land is taken by compulsion. The funding currently secured for the DCO Scheme more than covers the anticipated compensation liabilities anticipated, so it should be the case that the Council, and in due course the Secretary of State, can be satisfied the Convention Rights of those affected by the DCO Scheme are not infringed in a way contrary to Article 1 of Protocol 1.
- 9.30 The Council has, in accordance with the Planning Act 2008, undertaken extensive consultation on the proposals. Local policies that support the project have also been the subject of extensive public consultation. Further representations will be possible if the application for the DCO is accepted by the Planning Inspectorate. In addition, open floor hearings will be heard with the panel considering whether or not to recommend that the DCO is made by the Secretary of State.
- 9.31 All of these provisions, and the fact that compensation will be available to parties whose interest in land is directly affected through acquisition of land, new rights or temporary possession, mean that human rights will not be infringed as the Council and Secretary of State will be following a process prescribed by law and from which a right to compensation arises if land is taken pursuant to the DCO. A Summary of the Property Cost Estimate is attached in appendix 14 which is not for publication by virtue of paragraph 3 of Part 1 of schedule 12A of the Local Government Act.

### **The Public Sector Equalities Duty**

- 9.32 The Council is required to fully consider the impact of its operation with regards to s149 Equality Act 2010 and other relevant legislation, as well as the Human Rights Act discussed above. An Equalities Impact Report has been prepared as part of the environmental impact assessment and this is provided at Appendix 9. Overall it is not considered that there are any equality implications that arise over and above those set out in the report. Overall the project is providing a sustainable means of transport that will assist mobility impaired people to move between Portishead and Bristol, opening up a wider range of facilities to such persons.
- 9.33 It is also to be noted that as a result of the formal consultation processes, the Council has sought to add into the DCO Scheme the improvement of the bus stop located at Hayward Road/Lodway next to the Pill Memorial Club. This new facility will improve accessibility for connecting bus services, with a short distance between Hayward Road and the entrance to the railway station on Station Road in Pill. It will also provide for better access for passengers using any rail replacement bus service when these are operating to replace services on the Portishead branch line.

### **The Tests in Section 122 Planning Act 2008**

- 9.34 The land shown on the land plans is required for the DCO Scheme and a clear purpose for the proposed acquisition of the relevant interest in land has been established. A compelling case in the public interest for the acquisition of the land and new rights, in the taking of temporary possession powers, exists. Without such powers it is unlikely the DCO Scheme would come forward in a reasonable timescale, or indeed at all.



- 9.35 Compulsory acquisition powers are the most appropriate way of progressing the DCO Scheme. In terms of the compelling case in the public interest, members are advised that:
- (A) funding required for the project has been allocated;
  - (B) there is a clear technical case for the delivery of the project including justification for all of the Order Lands;
  - (C) the restoration of passenger train services between Portishead provides substantial economic and environmental benefits to Portishead, Pill and the wider sub-region;
  - (D) the MetroWest scheme is part of a package of railway improvements being promoted by the West of England Councils and WECA together with NR; and
  - (E) there are substantial advantages for mobility impaired people to have well designed modern rail facilities to allow them to make journeys between Portishead and Bristol.
- 9.36 The Council has approached all of the owners of the Order Lands where possible and commenced negotiations with the affected parties. Areas of land have been acquired by the Council by private treaty and others will hopefully be secured by agreement in due course. The Council will continue to negotiate with all other affected parties with a view to seeking agreement to acquire land or new rights (with an outright or buy option) throughout the Order making process. Human rights and equalities considerations are dealt with in full above.
- 9.37 It is clear that the land is required for the purposes of specifically nationally significant infrastructure projects as defined by s16 and 25 of the Planning Act 2008 and there is a compelling case in the public interest for that acquisition. Whilst private loss is acknowledged, compensation will be available in accordance with the Statutory Compensation Code and will be undertaken in accordance with the general law applying to compulsory acquisition. Overall the public benefits outweigh the private losses.
- 9.38 Delivery of the DCO Scheme is a well-established and long standing aim of the Council as well as being a corporate priority supported by joint local transport plan and core strategy. Its aims and objectives have been endorsed by the West of England Authorities and are supported by the Central Government. The existing economic analysis suggests that it will provide real gains for residents and businesses.

### **Survey Powers – access to third party land**

- 9.39 The draft DCO also includes powers for the Council to enter on to land and carry out surveys. This power will be available to the Council, if the DCO is made as drafted. Before the Order is made it may be necessary to carry out surveys, principally for environmental purposes but possibly also to assist with design evolution. Authority is therefore sought in this report for the Director of Development & Environment to seek powers for survey in the draft DCO but also, if necessary, to authorise use of the Council's existing survey powers if expedient to do so. In either situation compensation for loss and damage will be due to the landowner and occupiers subject to the exercise of the power.

## **10. OTHER IMPORTANT PROVISIONS OF THE DCO**

### Impact on Byelaws

- 10.1 Much of the Order Lands between Portishead and Easton in Gordano lies within the jurisdiction of the North Somerset Levels Internal Drainage Board (IDB). The IDB has existing byelaws preventing works to watercourses within its administrative area. These may impact on the processes for construction of the MetroWest project.
- 10.2 Consultation with the IDB has taken place and will continue. However, it is proposed that various byelaws will be dis-applied for the MetroWest project. These include the byelaws that:
- control the introduction of water to watercourses or increase the flow of running water in those;
  - vehicles not to be driven on watercourse banks or to be used for storage;
  - provisions relating to fences, excavations, pipes and damage or obstruction to the Board's property or its offices.
- 10.3 Each of these byelaws has been dis-applied by a previous DCO in the area (the National Grid Electricity Transmission PLC's Hinkley Grid connection DCO) and it is believed that it is reasonable to seek to dis-apply these powers for the DCO Scheme also.

## **11. DELEGATION TO OFFICERS TO TAKE THE APPLICATION THROUGH THE DCO PROCESS**

- 11.1 The process of applying for a DCO and then taking the proposed Order through the examination process is a highly detailed exercise, subject to considerable time pressures during the examination process. As a result, the delegations sought above is extensive. It is essential that officers have the ability to proceed swiftly throughout the process to enable the Council as applicant to respond to the very short time periods that will be imposed on the project.
- 11.2 In particular, it may be necessary to offer undertakings and assurances to parties who have made representations to the Order, to remove those representations being considered and indeed the possibility of them becoming an impediment to the Order being made.
- 11.3 Accordingly a wide delegation is being sought from members to allow the Director of Development & Environment the ability to deal with the anticipated circumstances in a rapid and efficient manner.

## **12. SEPARATION OF RESPONSIBILITIES**

- 12.1 It is to be noted that the Council as promoter of the DCO Scheme must keep its functions as local highway authority and planning authority entirely separate. Officers have already been briefed on this and a separation of responsibilities document has been provided to the relevant officers. Officers of the Council provided comments in formal consultation and are working with those promoting the

scheme in meetings akin to pre-application planning discussions to agree requirements (the equivalent of planning conditions) that will be imposed on the DCO Scheme.

12.2 Extensive consultation with the Council as highway authority has also taken place and will continue. The separation of responsibilities is being kept under review and further iterations of the document outlining the principles may be issued if required. The latest iteration of the document is contained in appendix 10.

12.3 It is essential that those acting on behalf of the Council performing its various functions always have in mind the role in which they are playing and must not have their judgement in any way affected by the Council's other roles in the MetroWest scheme. The principal (but not only) areas of separation are:

*The Council as planning authority*

12.4 The Council has a key role to play in the DCO examination as the local planning authority for its area. It will need to assist the Panel with questions on development plan policies and also discuss with the applicant and the Panel the drafting of requirements that will attach to the DCO Scheme. If consent is issued and implemented the local planning authority will be the body that enforces compliance with the final requirements. It is therefore essential that planning officers have a clear understanding of the Council's separate role as planning authority throughout the application for the DCO and during construction and operation of the DCO Scheme.

*The Council as highway authority*

12.5 The local highway authority is tasked with protecting the interests of highway users and, like the planning authority, will be expected by the Panel to contribute to the examination in a fair and impartial way. It will need to be satisfied that the proposed interventions in the highway network are appropriate. If the DCO is made and initiated the highway authority will be responsible for monitoring compliance with the highway and traffic elements of the DCO.

*Local Impact report*

12.6 The Council as a local authority will be requested by the Planning Inspectorate to provide a Local Impact report to the examination in due course. This will be led by the Head of Development Management. It will be the subject of a separate report to the Council as local planning authority, later this year.

### **13. COMMERCIAL ARRANGEMENTS WITH NETWORK RAIL AND TRANSFER OF POWERS AND LAND TO NETWORK RAIL**

13.1 Network Rail have responsibility for the operation, maintenance and renewal of infrastructure for the existing national railway network. Under regulatory governance overseen by the Office of Rail and Road and the Department for Transport, Network Rail do not have any responsibility to fund and implement proposals to extend the national network (or re-open closed sections of railway) outside the existing national network. Any proposals to extend the national network (or to re-open closed sections of railway) are treated as 'third party' proposals and the principal risks of implementing the proposals have to be met by the third party. The railway infrastructure delivered by the project will be transferred to Network Rail upon

completion and Network Rail will own, operate and maintain the Portishead Line. Therefore, MetroWest Phase 1 is defined as a third party railway project and the principal risks of delivering the project lie with the Council and WECA as co-promoters. As set out in section 2.3 of this report the Council and WECA each have a 50% share of the risks.

13.2 The joint working arrangements between the Council and Network Rail for taking the project through the DCO process are set out in a draft Promotion Agreement, which is attached in appendix 11. The Promotion Agreement will be supplemental to the existing commercial agreement with Network Rail (the Development Services Agreement). The Promotion Agreement covers the joint working arrangements in respect of:

- Governance and project management through a DCO approvals programme,
- Completion of the DCO application documents,
- Preparation for the DCO examination in public,
- Protective provision in respect of public utilities,
- Use of permitted development rights, where applicable,
- DCO powers and the transfer of powers,
- Amendments to the DCO,
- Future agreements or undertakings,
- Noise mitigation measure,
- Process of securing agreement between the parties,
- Land and property matters,
- Dis-charge of environmental obligations,
- Payment for acquisition of land and compensation,
- Land vesting,
- Future project agreements,
- Statutory requirements,
- Publicity and media.

13.3 It will be necessary to finalise the Promotion Agreement before the DCO application can be submitted, and for Network Rail to issue the Council a letter of no objection in relation to the DCO application documentation, which they are reviewing. Authorisation is sought to finalise and complete the Promotion Agreement with Network Rail. Authorisation is also sought to enter into further addendums of the existing Development Services Agreement to progress procurement of GRIP 5 detailed design, refer to section 15 of this report for further details about GRIP 5 detailed design. The estimated cost of the DCO process (as defined in the Promotion Agreement) and the GRIP 5 detailed design is within the project budget for 2019/20 (£4.491M) and 2020/21 (£7.159M), agreed by the Council on 12<sup>th</sup> February 2019.

13.4 In addition to the Promotion Agreement a suite of other agreements are required with Network Rail, in due course. It will be necessary for the Council to enter into an Implementation Agreement, an Asset Protection Agreement, a Property Agreement and Bridge Agreements with Network Rail in 2020 before GRIP 5 detailed design part a) of the GRIP 5 to 8 tender, can be awarded (refer to section 15.1 to 15.3 of this report for further details about GRIP 5).

13.5 The Implementation Agreement can be either on the basis of an emerging cost or a fixed price and further negotiations will be progressed with Network Rail on the commercial terms, in parallel with progressing the DCO. This does mean the

Council's risk exposure will increase in relation to the estimated spend of £4.491M for 2019-20, in addition to the spend to date of £16.167M, giving a total projected spend of £20.658M by March 2020, when it will be necessary to enter into the Implementation Agreement and other agreements with Network Rail, as those costs will have been incurred before acceptable commercial terms have been negotiated. However, achieving the DCO consent and completing GRIP 5 detailed design will take the project to a point where it is ready to be implemented subject to approval of the Final Approval Business Case. A further report will be brought back to the Council in 2020 setting out the details and, if it has been possible to reach commercial terms with Network Rail which officers can recommend to Members, to seek authorisation to enter into the Implementation Agreement and other agreements with Network Rail.

- 13.6 Once the project has been constructed, the part of the railway line that is currently on land owned by North Somerset Council will be transferred to Network Rail. In addition new compounds that are required by Network Rail will be transferred to Network Rail. The areas of land that will be disposed of in due course are:
- i. The railway owned by North Somerset Council
  - ii. The proposed Sheepway Compound
  - iii. Land at Wessex Water Pumping Station
  - iv. Part of the proposed Pill car park land
  - v. No 7 Station Road, Pill, which will form the new entrance to Pill Station
  - vi. The proposed Compound at Ham Green
  - vii. The proposed Compound at Clanage Road
- 13.7 Each will be transferred to Network Rail to form part of the operational railway network and will be restricted by a covenant imposed by the Council that the land will be used for railway related purposes only. On that basis it is anticipated that the restricted value of the land will be less than £2M. As a result the Council may rely on the General Disposal Consent provided in Circular 06/03 for the disposal of land at an undervalue if the land is being disposed of to further the Council's objectives for improving its economic, social and environmental well-being of its administrative area. The provision of the new railway, in accordance with the Council's own local planning policy and supported by National Policy clearly demonstrates the intended disposal accords with these objects.
- 13.8 Powers in the DCO relating to the operation and use of the railway will also be transferred to Network Rail. The Council will retain liabilities for payment of compensation and will also retain the powers relating to highways and traffic regulations, public right of way network and provision of open space.

## **14. CONSULTATION**

- 14.1 Consultation has been integral to the development of the scheme and further details on the history of the scheme consultation to date is available from

[www.travelwest.info/MetroWest](http://www.travelwest.info/MetroWest). The DCO process has very specific requirements for undertaking formal consultation with those that are likely to be affected by the proposed scheme. Affected communities were consulted formally through a two-stage process. The project team set out how it intended to consult with communities and other affected parties through its Statement of Community Consultation, as published in June 2015 for the Stage 1 consultation and revised for the September 2017 for Stage 2 formal consultation.

- 14.2 The Stage 1 formal DCO consultation was carried out by the project team between 22<sup>nd</sup> June 2015 and 3<sup>rd</sup> August 2015. The findings of the Stage 1 consultation were reported to the Rail Programme Board in December 2015. The Stage 2 formal DCO consultation commenced on 23<sup>rd</sup> October 2017 for 6 weeks until 4<sup>th</sup> December 2017. The findings of the Stage 2 consultation were reported to the Council at its meeting on 12<sup>th</sup> February 2019.
- 14.3 During the Stage 1 and Stage 2 community consultations, statutory bodies were also consulted. Statutory bodies required only one stage of formal consultation, which was carried out in parallel to the Stage 2 community consultation in October 2017; they were informally consulted during Stage 1 of community consultation in June 2015.
- 14.4 The total number of responses received during the Stage 1 consultation was 878. The total number of responses received during the Stage 2 consultation was 1,055. The level of support for the scheme is very high with 95% of community respondents fully or mainly in support of the proposals. Issues raised by the community mainly concerned traffic and parking, impacts during construction, visual and environmental impacts of new infrastructure such as the stations and bridges, and project timescales. Statutory bodies raised specific, detailed concerns based mainly on their statutory duties. A summary of responses to Stage 2 Consultation, is attached in appendix 12.
- 14.5 The DCO Application requires a detailed consultation report to be included summing up all consultation activities undertaken during the scheme's development, including formal and informal stages. The purpose of the report is to demonstrate to the Planning Inspectorate (PINS) that adequate consultation has been undertaken in line with the Statements of Community Consultation (both of which were themselves consulted on and agreed with hosting and neighbouring LPAs before consultation commenced), and that all statutory consultees have also been consulted. The DCO Consultation Report is one of the last documents to be finalised for the DCO application as all issues addressed and included in the application need to be referenced.
- 14.6 Following submission of the application, all neighbouring and host LPAs will be contacted by PINS inviting comment on the adequacy of the scheme's consultation. The LPAs will be asked to respond to PINS with their views relating specifically to the two Statements of Community Consultation (SoCC), to state whether they believe the consultation undertaken complied with approach to consultation set out in the two SoCC documents. A briefing has taken place with the LPA's about the adequacy of consultation process and they are aware that PINS will contact them post submission of the DCO application, giving them 14 day to respond. This process happens during the 28-day period PINS have to determine whether to accept the DCO Application.

## **15. DETAILED DESIGN**

- 15.1 In parallel with the DCO process, it will be necessary to proceed with the detailed design for the railway works (GRIP5) and arrangements for GRIP stages 6 to 8 which are construction, handback and project close. The delivery approach going forward will be through a design and build contract for GRIP 5 through to GRIP 8. The contract will comprise of two main parts:
- Part a) GRIP 5 (Detailed Design)
  - Part b) GRIP 6 to 8 (Construction, handback and project close)

The contract will be let by Network Rail with a break clause after the completion of part a) GRIP 5, to enable this work to be fed into the completion of the project Final Approval Business Case.

- 15.2 The invitation to tender for GRIP5 to 8 will be commissioned via an addendum/s to the Development Services Agreement with Network Rail and authorisation is sought for the Director of Development & Environment to enter into the addendum/s. The estimated cost of this has been included within the project budget for 2019/20 (£4.491M) and 2020/21 (£7.159M), agreed by the Council on 12<sup>th</sup> February 2019.
- 15.3 Before part a) of the tender (GRIP5) can be awarded it will be necessary for the Council to enter into an Implementation Agreement, an Asset Protection Agreement, Property Agreement and Bridge Agreements with Network Rail in 2020. A further report will be brought back to Council seeking authorisation to enter into the Agreements and to award part a) of the tender. Authorisation to award part b) of the tender will be sought upon completion of the Final Approval Business Case in 2021.
- 15.4 The design and delivery of the proposed highway works at Quays Avenue, including the proposed car park on Harbour Road for Portishead station, is to be procured by the Council. A detailed procurement strategy is currently being developed, that will set out the most effective procurement route. We will also explore opportunities to do advanced work (prior to DCO approval) as set out in section 16.

## **16. PRELIMINARY WORKS & LAND ACQUISITION IN ADVANCE OF FINAL APPROVAL BUSINESS CASE APPROVAL**

- 16.1 The project construction programme entails a complex sequence of works which has major interfaces that will need to be dealt with in order to ensure the programme is met. These interfaces include the need to undertake works to re-align Quays Avenue and to set up the temporary construction compounds, before the main construction works can commence. Although these works could be programmed to commence after the approval of the Final Approval Business Case, this would prolong the duration of the construction programme and consequently the overall delivery cost of the project. This time and cost impact can be reduced by bringing forward a package of preliminary works, in advance of the approval of the Final Approval Business Case.
- 16.2 A potential package of preliminary works is currently being scoped and further details will be brought back to Council in due course. It should be noted that in any case, it will be necessary for the Council and the co-funding partners to meet some costs ahead of the approval of the Final Approval Business Case, to enable Network Rail to place orders for long lead time bespoke materials such as the turn-outs for Pill

Junction and Parson Street Junction and to meet the cost of possessions of the operational railway which also have particularly long lead times.

- 16.3 Section 9 of this report outlines a summary of the land required for the delivery of the Project. While the DCO includes powers for the compulsory acquisition of land it should be noted that there is an onus on the promoter (the Council) to demonstrate that it has attempted to acquire the land by negotiation, ahead of the DCO examination. It should also be noted that while negotiations with land owners continue, it is not possible to state with any certainty, which land could potentially be acquired ahead of the DCO examination. Clearly, the circumstances of land owners and their motivations to agree the sale of their land, change over time. Authorisation is sought for the Director of Development & Environment to agree terms for the acquisition by agreement of land or any interests in land and to complete acquisition transactions (including the entering into of options for the acquisition and/or use of land and agreements as to compensation and/or accommodation works) as may be required for the proposed railway and associated works, up to a total ceiling of £1M, in advance and for the duration of the DCO examination.

## 17. FINANCIAL IMPLICATIONS

- 17.1 The estimated capital out-turn cost of the project is £116.4M, as set out in detail in the project Outline Business Case in December 2017, of which £16.167M has been spent to date, up to the end of 2018-19 financial year. As set out in paragraph 6.2 and 6.3 funding for the project has now been allocated, and drawdown of funding is subject to grant conditions and business case approvals. The project budget sources are set out in the table below.

### Project Budget

Funding Source	Total Funding Secured	Spend to date up to 2018-19
Local Growth Funding (Prep Costs Award 2015)	£8,846,000	£8,846,000
Local Growth Funding (Prep Costs Award 2018)	£1,700,000	£1,700,000
Local Growth Funding (Prep Costs Award 2019)	£500,000	£50,000
Local Growth Funding (Devolved Major Project)	£16,274,430	£0
<b>Total Local Growth Funding</b>	<b>£27,320,430</b>	<b>£10,596,000</b>
Economic Development Funding (Swapped with LGF)	£26,079,000	£0
Contributions to date by four Councils	£4,413,000	£4,413,000
NSC additional contribution Dec 17	£5,860,000	£1,158,506
WECA contribution Dec 17	£5,860,000	£0
NSC additional contribution	£15,000,000	£0
DfT Contribution via CP6 Rail Network Enhancements Pipeline	£31,900,000	£0
<b>Total</b>	<b>£116,432,430</b>	<b>£16,167,506</b>

- 17.2 To date £10.596M of Local Growth Funding (LGF) has been spent on preparation costs, the remainder has been allocated from local contributions from the authorities. A further £11.650M of LGF is required for 2019-20 and 2020-21 to complete work feeding into the Final Approval Business Case, including the DCO process and GRIP5 Detail Design, for which this report is seeking authority to spend. This would



take the Local Growth Funding spend to £22.696M out of a total allocation of £27.320M of Local Growth Funding, see table below.

- 17.3 As set out in section 16 of this report, it will be necessary for the Council and WECA to meet some further costs ahead of Final Business Case Approval. These costs include the cost of bespoke long lead time materials such that Network Rail will need to order and the cost of possessions of the operational railway which have particularly long lead time. Furthermore, work is underway to scope a larger package of preliminary works to de-risk the main construction programme and reduce overall project timescales and total capital cost. Further details about the package of preliminary works will be brought back to Council in due course.
- 17.4 Upon securing the DCO, completion of detailed design (GRIP5) and procurement of construction, the Final Approval Business Case will be presented to the Council and to co-funders for approval in 2021 to proceed with awarding construction contracts and to implement the project.

#### Forecast Local Growth Funding Spend by March 2021

Item	Total
Local Growth Funding Prep Cost Award 2015	£8,846,000
Local Growth Funding Prep Cost Award 2018	£1,700,000
Local Growth Funding Prep Cost Award 2018	£500,000
Future Local Growth Funding drawdown 2019-20	£4,491,019
Future Local Growth Funding drawdown 2020-21	£7,159,130
<b>Sub-total</b>	<b>£22,696,149</b>
Future Local Growth Funding drawdown for preliminary works 2019-20 and 20-21	£4,624,281
<b>Local Growth Funding Total</b>	<b>£27,320,430</b>

- 17.5 Authorisation to spend a further £11.650M of Local Growth Funding was approved by the Council at its meeting of 12<sup>th</sup> February 2019, subject to approval by the West of England Joint Committee and WECA (as the accountable body) to drawdown the LGF and to submit the DCO application. The role of WECA and the West of England Joint Committee is set out in paragraphs 2.3 and 2.4. It is anticipated that approval will be confirmed by both bodies on the 14<sup>th</sup> June ahead of the Council's meeting on 25<sup>th</sup> June 2019. The forecast spend profile for the £11.650M is shown in the table below.

#### Forecast Spend Profile

Item	Prior Periods	2019/20	2020/21	Total
	Actual to date (up to 2018/19)	Forecast	Forecast	Forecast
	£	£	£	£
DCO Stages 2 to 5		3,280,019	2,796,130	6,076,149
GRIP 5 and associated technical work		1,211,000	4,363,000	5,574,000
<b>Total Prep Costs*</b>	<b>16,167,506</b>	<b>4,491,019</b>	<b>7,159,130</b>	<b>27,817,655</b>

\* this includes land acquisition costs of £973k

- 17.6 Authorisation is sought to add £4.491M into the Councils 2019/20 capital programme for MetroWest Phase 1, funded from headroom resources, previously earmarked for the project, until approval has been granted to draw down Local Growth Funding. Authorisation is also sought to delegate authority to the S151 officer to switch the funding on receipt of the associated confirmation from the WECA as the administering body.
- 17.7 As set out in paragraph 13.2 and 15.3 it will be necessary for the Council to enter into an Implementation Agreement with Network Rail in 2020 before part a) of the GRIP 5 to 8 tender can be awarded. The Implementation Agreement can be either on the basis of an emerging cost or a fixed price. A further report will be brought back the Council setting out the details and to seek authorisation to enter into the Implementation Agreement.
- 17.8 The project has a quantified risk register with a total risk allowance of £22M allocated within the £116 overall project budget, this is detailed within the risk section below. However, there are some key financial risks, which require highlighting as follows.
- As the project is utilising capital funding there remains a risk of revenue reversion should the project not be delivered. In such an event if part of the project is delivered it may be possible to limit the revenue costs arising, through the submission of the DCO, delivery of phase 1A and the purchase of any assets.
  - Network Rail are scheduled to provide NSC with the GRIP4 cost update by the end of June 2019. This cost estimate will reflect the GRIP4 design, additional works identified within the development of this stage, changes to the project proposals as a result of the formal DCO consultation, re-assessment of project risks, and implications of time delay on the delivery of the project, since the completion of GRIP 3 and the Outline Business Case in December 2017. Any change to the £116M, current estimated capital out-turn, will be taken through the Governance boards and reviewed in the context of the existing project risk allowance, design and procurement options; with any recommendations from these boards being brought back to Council, with the objective of maintaining the £116M budget allocation.

## **18. LEGAL POWERS AND IMPLICATIONS**

- 18.1 The submission of the Development Consent Order application has a range of legal implications which are set out in this report.

## **19. RISK MANAGEMENT**

- 19.1 Risks at the project and programme level are managed through the WoE Strategic Rail Board, which reports to the WoE Joint Committee. While at this stage there remains potential for the scheme costs to increase as the scheme design and technical work progresses, this risk applies to all major transport schemes up to completion of the design, consents / approvals and the tendering of the construction works. As the project is a third party railway project the principal risks of implementing the proposals have to be met by the Council and WECA as the co-

promoters. The Council and WECA each have a 50% share of the risks and there is a total risk allowance of £22M, within the project capital budget.

19.2 As set out in section 13.4 it will be necessary for the Council to enter into an Implementation Agreement, an Asset Protection Agreement, a Property Agreement and Bridge Agreements with Network Rail in 2020 before GRIP 5 detailed design part a) of the GRIP 5 to 8 tender, can be awarded (refer to section 15.1 to 15.3 of this report for further details about GRIP 5). This does mean the Councils risk exposure will increase in relation to the estimated spend of £4.491M for 2019-20 in addition to the spend to date of £16.167M, giving a total projected spend of £20.658M by March 2020, when it will be necessary to enter into the Implementation Agreement and other agreements with Network Rail. However, achieving the DCO consent and completing GRIP 5 detailed design will take the project to a point where it is ready to be implemented subject to approval of the Final Approval Business Case.

19.3 The project top five risks are set out the table below. Risk 1 is a strategic governance risk, which applies to any major transport scheme promoted using capital and grant funding. Risk 2 is partly a governance risk and partly a technical risk and risk 3 and 4 are technical risks managed by the Project Team and reported through the governance chain of command. Risk 5 is a financial risk relating to revenue budgets which will be dealt with through further negotiation with the DfT.

Risk	RAG rating	Mitigation	Mitigated RAG rating	Financial impact of risk if mitigations are not delivered
1. Revenue Reversion Risk should scheme not progress and repayment of grant	R	Risk is mitigated by the purchase of assets, submission DCO and the delivery of Scheme 1A. Work is taking place with finance officers to reduce the risk of full revenue reversion,	A	Up to £15.000m (revenue reversion total based upon £11m in repayment of grant from revenue and up to a further £4m of revenue reversion)
2. Time delays to the submission of the DCO application, causing a repeat of processes and an increased risk of not spending the Local Growth Funding within the required timescale, resulting in the loss of the balance of this funding	R	Engagement with key decision makers on the required authorisations and finalisation of all technical work on application documents including dealing with formal comments from statutory bodies	A	Up to £4.800m (£1.800m cost of additional inflation, £0.700m to repeat DCO formal consultation and £0.300m to repeat of ecology surveys and £2m loss of LGF funding)

3. Time delays to the programme, as result of; a longer DCO examination or to complete stage gate and other major technical or commercial milestones	R	Engagement with Network Rail to ensure sufficient resourcing and more detailed development of the scheme programme to identify opportunities to de-risk the programme	A	Up to £7.500m (under review and in part built into £22m risk budget)
4. Development of the scheme design results in additional infrastructure outside DCO red line boundary or additional technical scope that was not identified in previous GRIP stages	R	Continued technical engagement with Network Rail and review of specific pressure points on the red line boundary.	A	Up to £8.000m (under review)
5. Train service revenue support costs for the first three years, are not affordable to the councils, causing delay to programme.	R	Continue development of the operational proposal and engagement / negotiation with the incumbent train operator and the DfT.	A	Up to £3.400m (under review)

19.4 Network Rail understand the importance of controlling costs, within the context of a medium to long term relationship with the four councils and WECA. Network Rail are committed to working with us to deliver an affordable scheme. As set out in paragraph 13.2 there is also an opportunity to cap the overall risk exposure for the co-promoters and co-funders, through a fixed price Implementation Agreement for the detailed design, construction and implementation of the project.

19.5 The recent changes to the project governance with WECA now co-promoting the project brings additional expertise and resource into the Client Team. This additional resource means the Client Team has greater capability to manage the technical interfaces with Network Rail and this will increase opportunities to challenge costs working with Project consultants and contractors.

## 20. EQUALITY IMPLICATIONS

20.1 An Equality Impact Assessment has been undertaken and is attached as appendix 10.

## 21. CORPORATE IMPLICATIONS

21.1 The improvement of the transport network is a key priority in the Corporate Plan. The project will play a significant role in Supporting Economic Prosperity (Aim 5) and Protecting and Improving the Environment (Aim 3). There are no specific cross-service implications.

## **22. OPTIONS CONSIDERED**

- 22.1 The WoE Joint Transport Board (superseded by the WoE Joint Committee) considered three main options at its meeting on 17<sup>th</sup> March 2017 and determined to take a staged approach to the delivery of the scheme. Chapter 3 Scheme Development and Alternative Considered of the Environmental Statement which is to be submitted as part of the DCO application, sets out the options considered in detail.
- 22.2 The wider context for the project option selection is as follows; the local rail network across the West of England is under-developed in comparison with similar sized city regions, the local highway network is congested at key locations on arterial corridors and the overall demand for transport continues to increase. The focus of the project option selection was to address the project objectives by making effective use of dis-used / under-used strategic rail corridors in parallel with enhancements to existing local rail lines.

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### **APPENDICES**

Appendix 1 - Simplified Plan of the DCO Scheme

Appendix 2 - Draft Development Consent Order

Appendix 3 - Draft Works Plans

Appendix 4 - Summary of Analysis of the National Networks National Policy Statement

Appendix 5 - Addendum to the Outline Business Case

Appendix 6 - List of Affected Highways, alterations to PROW changes and Traffic Regulation Orders

Appendix 7 - Draft Land Plans

Appendix 8 - Summary of requirements for land over which for compulsory powers are to be sought

Appendix 9 - Equality Impact Assessment

Appendix 10 - Separation of Responsibilities document

Appendix 11 – Draft Promotion Agreement

Appendix 12 - Summary of responses to Stage 2 Consultation

### **Exempt Items**

**RED PAPER** Appendix 13 Report on liabilities arising from protective provisions (not for publication by virtue of paragraph 3 of Part 1 of schedule 12A of the 1972 Local Government Act)

**RED PAPER** Appendix 14 Summary of Property Cost Estimate (not for publication by virtue of paragraph 3 of Part 1 of schedule 12A of the 1972 Local Government Act)

## **BACKGROUND PAPERS**

Report to Council 12<sup>th</sup> February 2019 MetroWest Phase 1 Progress on the Submission of the Development Consent Order Application and Associated Approvals

Report to Council 14<sup>th</sup> November 2017 MetroWest Phase 1 Budget and Bidding Approval