

STATEMENT OF CASE

**PREPARED ON BEHALF OF THE TYNE AND WEAR PASSENGER TRANSPORT
EXECUTIVE (TRADING AS NEXUS)**

NORTHUMBERLAND LINE TRANSPORT AND WORKS ACT ORDER

Reference: DPI/P2935/21/19

1. INTRODUCTION

- 1.1 This Statement of Case has been prepared by DLA Piper (UK) LLP on behalf of the Tyne and Wear Passenger Transport Executive (trading as Nexus) (“**Nexus**”).
- 1.2 Nexus own and operate the Tyne and Wear Metro (“**Metro**”). The Metro is an overground and underground light rail rapid transit system serving the metropolitan boroughs of Newcastle upon Tyne, Gateshead, North Tyneside, South Tyneside and the City of Sunderland. It is the UK's busiest light rail system outside London, carrying approximately 37 million passengers a year, and has sixty stations with trains running up to every three minutes at peak times.
- 1.3 On 7 July 2021, Nexus submitted a representation (“**Representation**”) to Northumberland County Council’s (“**Council**”) application (“**Application**”) for the Northumberland Line Transport and Works Act Order (“**Order**”). As stated in the Representation, while Nexus supports the principle of the scheme proposed by the Application (“**Scheme**”), it requires certain protections to be secured in order to ensure the ongoing safe and efficient operation of the Metro.
- 1.4 As set out in the joint statement prepared by Nexus and the Council, and submitted to the Inquiry on 21 September 2021, the parties continue to engage in productive discussions as to the necessary protections to address the issues set out in the Representation. While Nexus envisages that satisfactory protections should be capable of being agreed with the Council in advance of the commencement of the Inquiry, this Statement of Case is submitted to provide for the eventuality that agreement is not reached and substantive discussion of the necessary protections is required before the Inquiry.

2. INTERFACES

- 2.1 Following its review of the Application documents, Nexus identified a number of locations in which there would be an interface between the Metro and the Scheme. The relevant aspects of the Scheme in this regard can be categorised as: works in proximity to the Metro; the proposed use of existing accesses and bridges in the vicinity of the Metro; and the inclusion in the Order of powers of compulsory acquisition (“**CA**”) and temporary possession (“**TP**”) in respect of Nexus’s land and interests. The location and nature of these interfaces currently identified by Nexus is described below.

Works

- 2.2 The Scheme is located alongside or in close proximity to the Metro in a number of locations between Benton station and Shiremoor station, as shown on sheets 1, 2 and 3 of the Land Plans and Rights of Way Plans (together, the “**Plans**”). As a result, it is critical that any works or structures proposed by the Scheme are designed, constructed and operated in such a way that they do not negatively impact on the safe and efficient operation of the Metro. Therefore, the construction and subsequent operation of the Scheme must be managed in such a way as to ensure the integrity of the Metro track, stations and other assets and not interfere with its operation.
- 2.3 The primary area of interaction between the Metro and the works comprised in the Scheme is at the Palmersville Underpass, as shown on sheet 1 of the Plans. At present the footpath (Forest Hall 5) passes beneath the Metro Line by means of an underpass before passing over a level crossing on the adjacent railway. The Scheme proposes that the footpath would be diverted by way of a new underpass to be constructed beneath the adjacent railway. Therefore there is potential for material adverse effects upon the Metro.

- 2.4 It is understood that the detailed design of the relevant works would form the subject of a subsequent application for planning permission. As a result, the proposed design is not sufficiently developed at this stage to allow Nexus to provide detailed comments. However, and as a minimum, the below non-exhaustive list of issues must be addressed:
- 2.4.1 clarity as to the proposals for the future maintenance responsibility and ownership of the embankments between the Metro Line and the adjacent railway is required;
 - 2.4.2 the Metro and associated assets would need to be protected from any physical interference, flooding or other disturbance from the construction or operation of the new underpass;
 - 2.4.3 Nexus would require access to the Metro and associated assets to be maintained at all times, both from the existing underpass and trackside;
 - 2.4.4 the detailed design work would need to be agreed by Nexus through Nexus's Engineering Change Management process, so as to ensure that the integrity of the Metro and associated assets is maintained both during construction and thereafter;
 - 2.4.5 track monitoring of the Metro would be required during construction; and
 - 2.4.6 Nexus' communications team would require advance notice of any footpath closure, to enable Nexus to address any passenger enquiries.
- 2.5 The mechanisms by which to address the above issues and secure the necessary protections are described at section 3 of this Statement of Case.

Accesses and bridges

- 2.6 In a number of locations, the Scheme proposes the use of accesses and bridges in the vicinity of, over, or shared with, the Metro. These are described in further detail below:
- 2.6.1 *Holystone Farm access and bridge* – As shown on sheet 2 of the Land Plans, the existing access road and bridge passes over the Metro to the south west of the A19, leading to Holystone Farm. The Scheme proposes to take powers of temporary access in respect of the access and associated bridge over the Metro. This is in order to gain access to and from one of the Scheme's proposed lay down sites using construction and other vehicles.
 - 2.6.2 *Algernon Drive bridge* – As shown on sheet 2 of the Land Plans, the existing bridge passes over the Metro at Northumberland Park station. The Scheme proposes to acquire permanent rights over the bridge. The bridge is owned by Northumberland Estates. Nexus enjoys rights of way over it and has an obligation to repair and maintain.
 - 2.6.3 *Waggon Ways bridge* – As shown on sheet 3 of the Land Plans, the existing bridge passes over the Metro to the north of Earsdon Road. The Scheme proposes to take powers of temporary access in respect of the bridge. Nexus has the benefit of a lease in this location.
- 2.7 At each of the above locations, it is essential for the ongoing safe and efficient operation of the Metro that suitable schemes for the programme and nature of use, maintenance of access, survey and monitoring of bridges and remediation of any structural damage are implemented prior to the commencement of the use of the relevant access road or bridge.

CA and TP

- 2.8 The Scheme proposes powers of CA or TP in relation to Nexus's land and interests, as described in the Book of Reference. Nexus is in the process of reviewing the accuracy of the land and interests identified in the Book of Reference, and its position is reserved in this regard. This is reflected by the placeholder with regard to plot numbers at paragraph 2 of the draft Protective Provisions.

3. REQUIRED PROTECTIONS

- 3.1 In order to ensure the ongoing safe and efficient operation of the Metro, Nexus requires certain amendments to be made to the draft Order, in the form of the addition of Protective Provisions and amendments to articles 28 and 29. The necessary drafting (which remains subject to the ongoing discussions between Nexus and the Council) is appended to this Statement of Case, while a description of the key protections required with reference to the interfaces described at section 2 of this Statement of Case is provided below.

Works

- 3.2 In order to ensure that all necessary information is provided to Nexus ahead of the commencement of any development forming a part of the Scheme, the draft Protective Provisions include a mechanism whereby the Council must, prior to the commencement of certain works, provide Nexus with plans and other details for approval before the development in question may commence. Similarly, the draft Protective Provisions would allow Nexus to require the provision of protective works, should these be necessary to ensure the safety of the Metro. For the same reason, the draft Protective Provisions and the amendments to articles 28 and 29 of the Order would allow Nexus to carry out certain works (including protective works). Combined with the requirement for Nexus's approval of certain works, this would ensure the integrity of the Metro track, stations and other assets.

Accesses and bridges

- 3.3 The draft Protective Provisions provide for the maintenance of access to the Metro, thus ensuring that the Council's use of the accesses and bridges described in section 2 of this Statement of Case does not impede the safe and efficient operation of the Metro. Similarly, the requirement detailed at paragraph 3.2, above, extends to the provision of programmes and schemes of monitoring. Further, the draft Protective Provisions require the Council to make good any damage caused to railway property by reason of certain of the works forming part of the Scheme.

CA and TP

- 3.4 In order to ensure the coordination of the construction of the Scheme with the operation of the Metro, the draft Protective Provisions prevent the Council from exercising certain powers under the Order without the prior consent of Nexus. This allows for the proper management of any CA or TP, as well as the exercise of other powers such as the survey of land and closure of level crossings.

Other provisions

- 3.5 In order to facilitate the protections described above and set out in full in the appendix to this Statement of Case, the draft Protective Provisions also include mechanisms to provide for the protection of the Metro from Electromagnetic Interference, the payment of costs by the Council

and the cooperation of the parties in working together to facilitate the Scheme while protecting the Metro and associated assets.

4. CONCLUSIONS

- 4.1 For the reasons set out at section 2 of this Statement of Case, it is appropriate and necessary that certain protections be afforded to Nexus. This is particularly so given the status afforded to Nexus as a statutory undertaker holding land and interests for the purpose of that undertaker, as provided for by section 16 of the Acquisition of Land Act 1981.
- 4.2 The protections described above, and set out in full in the appendix to this Statement of Case, are derived from precedented provisions in the context of both development consent orders and Transport and Works Act orders, including in respect of the protections typically afforded to Network Rail, whose operations are comparable to those of Nexus. As a result, should the parties not reach agreement as to the protections to be secured outwith the Inquiry, Nexus's position is that the drafting appended to this Statement of Case must be incorporated into the draft Order so as to ensure the integrity of the Metro track, stations and other assets.
- 4.3 However, for the avoidance of doubt, Nexus remains committed to progressing discussions with the Council so as to secure the necessary protections without the need to put these matters before the Inquiry.

DLA Piper UK LLP

12 October 2021