

23 November 2020

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**By email only**

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Our ref:  
KJG1/RG1/381278.1  
Your ref:

Dear Mr Bartkowiak

**Applicant: North Somerset District Council**  
**Development Consent Order application for Portishead Branch Line - MetroWest Phase 1**  
**Application Ref: TR040011**  
**DCO Document Reference: 9.8 ExA.CL.D2.V1**

### **Deadline 2 Submissions**

I write further to the Planning Inspectorate's Rule 8 letter dated 26 October 2020 (the **Rule 8 letter**).

In accordance with the examination timetable at Annex A of the Rule 8 letter, I provide the following in response to Deadline 2:

1. Notification to speak at Issue Specific Hearing (ISH)
2. Response to the ExA's ExAQ1
3. Written Representations (WR)
4. Summaries of all WRs exceeding 1500 words
5. Comments on the Local Impact Reports (LIR)
6. Applicant to provide guide to the application
7. Applicant to provide CA schedule
8. An updated version of the draft DCO in clean, tracked and word versions (if required by ExAQ1) together with validation email and report
9. Responses to any further information requested by the ExA
10. Comments on responses to Relevant Representations
11. Comments on the Applicants draft itinerary for the ASI
12. Comments on any additional information/submissions received by deadline 1

### **Additional Matters**

13. Proposed non-material change to Order and Works – removal of Work 16D – discussed further below.

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### **Items 1: Notification to speak at ISH**

The Applicant hereby notifies the Planning Inspectorate of its wish to attend this hearing and make oral representations on 7 December 2020.

The Applicant confirms that the following persons will be attending and speaking at the ISH on the Applicant's behalf:

- James Willcock – Applicant
- Richard Matthews – Applicant
- Richard Guyatt – WBD
- Kevin Gibbs - WBD
- Steve Yates – Ardent (Compulsory Acquisition)
- Clare Williams – Jacobs (Ecology)
- Carolyn Francis – Jacobs (EIA)
- Andrew Linfoot – Jacobs (LVIA)
- Richard Stait – Jacobs (acoustics)
- Liz Allchin (support on Avon Gorge Woodlands SAC/HRA)

The Applicant will provide emails addresses for the above by separate email.

### **Item 2: Response to the ExA's ExAQ1**

This is enclosed.

Please note, that as a result of the ExA's questions regarding hedgerows, a new plan, named the "Hedgerow Location Plan" has been prepared and is submitted, as it is referred to in the revised dDCO, Schedule 13 Part 1. This plan would be a certified document.

### **Item 3: Written Representations (WR)**

The Applicant has not identified the need for additional written representations.

### **Item 4: Summaries of all WRs exceeding 1500 words**

The Applicant has not identified the need for additional written representations.

### **Item 5: Comments on the Local Impact Reports (LIR)**

These are enclosed in response to the LIR for:

- Bristol City Council
- North Somerset Council
- South Gloucestershire Council

### **Item 6: Applicant to provide guide to the application**

This is enclosed.

### **Item 7: Applicant to provide CA schedule**

This is enclosed.

**Item 8: An updated version of the draft DCO (Version 2) in clean, tracked and Word versions (if required by ExAQ1) together with validation email and report**

You will find enclosed:

- (i) clean draft DCO, in PDF;
- (ii) comparison version of the draft DCO, showing all changes from the draft submitted with the application in November 2019 (Version 1), in PDF;
- (iii) comparison version of the draft DCO, showing all changes from the draft submitted in September 2020 (Version 2), in PDF;
- (iv) Word version of the clean draft DCO; and
- (v) validation report.

You will also find enclosed a document commenting on the proposed changes.

The Applicant has not fully updated Schedule 17 of the draft DCO as it is anticipated further changes to that Schedule will be required. The Applicant suggests it addresses Schedule 17 for Deadline 7.

The Applicant is also taking this opportunity to update the Explanatory Memorandum. You will find enclosed:

- (i) clean draft Explanatory Memorandum, in PDF; and
- (ii) tracked draft Explanatory Memorandum, showing all changes from the draft submitted with the application in November 2019, in PDF.

Please also see item 13 below.

**Item 9: Responses to any further information requested by the ExA**

The Applicant believes this is not applicable.

**Item 10: Comments on responses to Relevant Representations**

Comments are provided in relation to Representations or Additional Representations (rather than responses to Relevant Representations):

- Bimcorp Limited (Rep-041)
- Mrs Freestone (Rep-043)
- Mr Braunton (AS-049)

**Item 11: Comments on the Applicants draft itinerary for the ASI**

Not applicable to the Applicant.

**Item 12: Comments on any additional information/submissions received by Deadline 1**

The Applicant believes this is not applicable.

**Item 13: Proposed non-material change to Order and Works Scheduled in Schedule 1 – Proposed removal of Work 16D**

The Applicant has taken the opportunity presented by Deadline 2, and in advance of the Compulsory Acquisition Hearing on 4 December as well as the Issues Specific Hearing on 7 December, to make what the Applicant believes is a non-material change to the proposed Development Consent Order and scheme.

### **13.1 The proposed change**

The Applicant proposes to remove Work 16D from the draft DCO. This has consequent impacts (not yet made) on:

- A. The Explanatory Memorandum
- B. Statement of Reasons
- C. The Land Plan
- D. The Book of Reference
- E. The Environmental Statement

The proposed changes to the draft DCO are indicated in the submitted revised version of the Order.

The other documents have not at this stage been updated but can be updated very swiftly if the changes are agreed to by the Panel.

The proposed changes to the Order itself are:

- a. Schedule 1 – Work 16D removed;
- b. Schedule 2- all references in the list of stages to Work 16D are removed from requirement 3; and
- c. Schedule 2 - Requirement 30 is removed (and for convenience has been replaced with the new requirement proposed for activities affecting Junction 19 M5.

### **13.2 The reasons for the proposed change**

The proposed changes relate to land on part of Manor Farm, Easton in Gordano.

Plot 05/85 shown in the Land Plans (AS-012) includes land on the east and west side of the Easton in Gordano Stream, which bisects the plot.

The land on the Marsh Lane side of the Easton in Gordano Stream ("Western Parcel") was included within the Order lands to permit the change in levels of that land provided to include additional flood compensation land as a result of the slightly widened railway embankment to the north of Plot 05/85.

Both Bristol Port Company and the landowner have objected to the inclusion of Western Parcel in the Land Plans and Book of Reference.

Whilst the Applicant still requires the land to the east of Easton in Gordano Stream forming part of Plot 05/85 ("Eastern Parcel") (and will seek a further new right to connect 05/85 with Plot 05/75, if Work 16D is removed from the Order) the freehold acquisition of the Western Parcel will not be necessary if the proposed change to the Order is accepted by the ExA.

The Applicant would also undertake to the current freehold owner to grant a right of access from the "Cattle Creep" underbridge across the Western Parcel to the Eastern Parcel forthwith on the acquisition of the Eastern Parcel.

The Applicant wishes to reduce the impact on the freehold owners and has therefore proposed this change to the Examining Authority.

### **13.3 Consultation regarding the proposed change**

Prior to making this proposed change the Applicant has consulted with Bristol Port Company and the Environment Agency. The Applicant sent the letter at Appendix 1 to both parties on 23 October 2020.

Bristol Port Company has confirmed that it is content for Work 16D to not proceed and for the Western Parcel to be removed from the Land Plans and Book of Reference (this will be subject to a permanent right of access being sought over the Western Parcel to access the Eastern Parcel).

Whilst the Environment Agency has not confirmed the position in writing following our letter being sent to them, we believe from discussions between the Applicant, Bristol Port Company and the Environment Agency prior to the letter being sent that the Environment Agency will have no concerns regarding Work 16D no longer proceeding.

The Applicant has informed the owner of Plot 05/85 that not all of Plot 05/85 would be subject to compulsory acquisition, if the Panel agrees to the proposed amendment.

### **13.4 Is the proposed change a material change to the draft Order?**

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

The Applicant notes that there is no definition of what is a "material" change (see paragraph 2.1 of the Advice Note) but the Advice Note does differentiate between a material change and a different project.

The Applicant does not believe that the proposed changes represent a project that is different from that previously submitted for examination.

Further, the Applicant does not believe that the change proposed is material. The Applicant has followed Figure 2 of the Advice Note and exercised planning judgement to judge whether or not there are likely significant effects – the conclusion is that there are no likely significant effects as a result of the omission of Work 16D.

Further the Applicant is not increasing the amount of Order land sought – instead the area sought will be decreased.

The removal of the work is supported by the person whose benefit it was to be provided (Bristol Port Company) and further analysis by the Applicant has indicated that the existing drainage system on the Bristol Port Company's land) could accommodate the very small change in water levels which would result from the Scheme.

Both Bristol Port Company and the landowner have sought for the removal of the land from the Order and the Applicant is able to accommodate this if the proposed change is made.

### **13.5 Conclusions in relation to the proposed change**

In light of the information provided above, the Applicant is satisfied that the change proposed is not a material one and has no significant bearing on the application being made nor the works being carried out. Because:

- a. all parties directly affected are content for the change to be made or have them projected to the underlying compulsory acquisition for which is required as a result of the inclusion of Work 16D;
- b. the proposed change will not give rise to any additional significant environmental effects; and

- c. The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) are not engaged.

The Applicant believes that the removal of Work 16D from the Order lands and the consequent amendments, together with amendments to the application documents as listed above, is both appropriate and should not be considered as a material change.

The Applicant seeks the ExA's confirmation that the changes to the relevant documentation can be made without engaging the material change process.

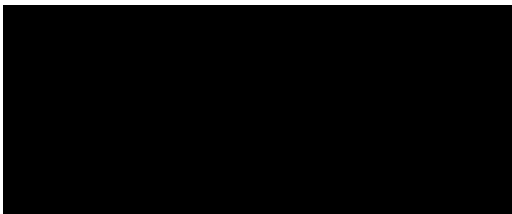
The Applicant will then amend the Land Plans, Works Plan and Book of Reference, as well as finalising the proposed amendments to the dDCO and Explanatory Memorandum.

### **Concluding Remarks**

The Applicant is happy to provide such further information as the Panel may require in respect of the proposed change to the scheduled works.

Please confirm safe receipt of this letter and enclosures.

Yours sincerely



**Richard Guyatt**  
Partner  
Womble Bond Dickinson (UK) LLP

**Appendix 1**

**Letter from the Applicant to Bristol Port Company and the Environment Agency dated 23 October 2020 (excluding enclosures)**