

**Written representation by
First Corporate Shipping Limited
trading as The Bristol Port Company**

23 November 2020

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

**Planning Inspectorate reference TR040011
Interested party reference PORT-S57657**

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1. **INTRODUCTION**

- 1.1 Pursuant to the Bristol Dock Acts and Orders 1848–2010 First Corporate Shipping Limited, trading as The Bristol Port Company (**BPC**), is the statutory undertaker (harbour and competent harbour authority) for Bristol and the owner and operator of the commercial port of Bristol (**Port**). It is an interested party for the purposes of this DCO process.
- 1.2 In its relevant representations, BPC recognised the ambition of North Somerset Council (**NSC** or **Applicant**) to provide an alternative transport mode for commuters from Portishead travelling to the Greater Bristol Region. However, it is concerned about the impacts that the detail of the scheme now being considered will have on its undertaking. It is notable that the current scheme looks to provide only a limited service for passengers but will have a significant and disproportionate impact upon BPC's undertaking during its construction and future operation and will involve the permanent loss of land in BPC's ownership held for the purpose of its statutory undertaking..
- 1.3 BPC therefore disagrees with elements of NSC's proposals in their current form because they will adversely affect the efficient and economic operation of the Port now and in the future.
- 1.4 In order to preserve its interests, and in accordance with its statutory functions, BPC seeks, among other things, material amendments to the draft DCO, including appropriately worded protective provisions.
- 1.5 Since submitting its relevant representations on 26 February 2020, discussions have taken place between BPC and the Applicant which are continuing but they have not, as yet, reached any agreed conclusions.
- 1.6 Some aspects of the Applicant's scheme remain opaque and, to date, Network Rail Infrastructure Limited (**Network Rail**) has not engaged with BPC in any meaningful manner. BPC therefore necessarily reserves its position to add to or amend this representation as necessary or appropriate and to make further written and oral representations.

2. **CURRENT ASSESSMENT OF ISSUES**

- 2.1 The Applicant's proposed development will have significant adverse impacts on BPC's land and the conduct of its commercial port activities.
- 2.2 Based on its assessment so far, BPC has identified issues of particular concern including those described below which are considered later in this representation. BPC's present objection can be taken to include the following:
- 2.2.1 the damaging effects of the proposals on the highly dynamic nature of BPC's business and statutory undertaking that must be able to deliver operational certainty to its customers and provide at all times a rapid, efficient link to inland transport, via the strategic road network (M5) and the national rail network;
 - 2.2.2 the effect of those proposals on the continued availability of rail paths for freight trains to and from Royal Portbury Dock (during and after construction of the works) and the interaction between those trains, passenger services and future maintenance activities;
 - 2.2.3 the adverse impact of those proposals on the use by BPC of the private crossing between its transit cargo storage areas on either side of the proposed railway;
 - 2.2.4 the lack of any adequate consideration of alternatives to those proposals, including in relation to the proposed land take for the temporary and permanent works, in order to minimise the strategic and operational impacts on the Port;
 - 2.2.5 the effect of the construction activity on the day to day operation of the Port and the other port-dependent businesses on the Royal Portbury Dock estate (**RPD Estate**);
 - 2.2.6 the operational consequences of NCS's proposed restrictions during construction and NSC/Network Rail's future access rights;
 - 2.2.7 the effect on the future of the Port of land which has been safeguarded for port development no longer being available for that purpose by virtue of it being taken compulsorily for purposes ancillary to the DCO scheme;
 - 2.2.8 the Applicant's failure to demonstrate any compelling case in the public interest for the compulsory acquisition of rights over BPC's land as allegedly set out in the draft DCO;
 - 2.2.9 the serious detriment which BPC, as a statutory undertaker, would suffer if compulsory acquisition were to be authorised;
 - 2.2.10 during construction:
 - (a) the impact of dust, debris and dirt caused by construction traffic and resulting air pollution which will, or may, contaminate motor vehicles and other sensitive cargoes handled at the port; and
 - (b) the creation and use of construction compounds;
 - 2.2.11 port security issues caused by the Applicant's intrusive activities on or adjacent to BPC's land; and
 - 2.2.12 ecological effects.

- 2.3 These matters all need to be dealt with satisfactorily and, in many cases, by appropriate amendment to the draft DCO.

3. **PORT OPERATIONS AND SECURITY**

- 3.1 The Port is a major deep water commercial facility and one of the largest in the UK. Its natural deep water gives it the ability to handle the largest ships that currently call in UK waters, and to that extent puts it in a unique position amongst UK ports. Its strategic importance is recognised at regional, national and European levels. In total, BPC's land - the dock estate - comprises 980 hectares (2,419 acres). It is divided by the River Avon and served by two lock systems, which provide access to Royal Portbury Dock (**RPD**) and the Avonmouth and Royal Edward Docks (together **Avonmouth**) respectively.
- 3.2 The Port benefits from excellent hinterland links. Both ports at RPD and Avonmouth have direct motorway access (at junctions 19 and 18 of the M5 respectively) and the M4/M5 interchange is within 12 kilometres of the Port. Both RPD and Avonmouth are also connected directly to the UK national rail network and have sufficient capacity for rail paths to key destinations. It is, in terms of access to strategic road and rail links, one of the best located ports in the country.
- 3.3 The Port is recognised as nationally significant infrastructure and a key gateway for UK trade: the cargoes handled, as described below, are distributed across the UK. In particular, its location and transport connections enable it to serve the heavily populated Manchester-London-Bristol 'triangle'.
- 3.4 The Port is an important employer in its own right; around 22,000 jobs around the UK are supported by BPC and its tenants. Together, they supported an estimated £1.4bn overall contribution to UK GDP in 2019.
- 3.5 An exceptionally wide range of trades is handled at the Port including:
- 3.5.1 motor vehicles;
 - 3.5.2 bulk energy trades (for example, biomass);
 - 3.5.3 dry and liquid bulks (for example, aggregates, petroleum products and fruit juice);
 - 3.5.4 animal feed and grains;
 - 3.5.5 containers;
 - 3.5.6 forest products and metals;
 - 3.5.7 fresh produce;
 - 3.5.8 project and heavy lift cargo; and
 - 3.5.9 cruise.
- 3.6 By land area, the motor vehicle import trade is a significant part of the Port's business and it is exceptionally sensitive to the impact of the Applicant's proposed development. Large areas of BPC's land are either leased to major car manufacturers or allocated for their use as secure motor vehicle compounds in order to receive and transit-store large volumes of motor vehicles prior to their onward inland distribution to motor dealer networks.
- 3.7 Security at the Port is a major consideration: BPC and its customers operate bonded facilities under HMRC approvals; the Port holds one of the largest licences to handle explosives in the UK; high value cargoes are routinely handled and it is a customer requirement that they must be secure at all times within the port area. For those reasons, the Port maintains an outer, fenced security perimeter with access only permitted through specific checkpoints.

- 3.8 BPC's security and policing is the responsibility of its own non-Home Office force of uniformed, warranted constables sworn under the Harbours, Docks and Piers Clauses Act 1847, established under the powers set out in the relevant local legislation applicable to the Port.
- 3.9 The Port Security (Avonmouth Dock and Royal Portbury Dock and Port of Bristol Security Authority) Designation Order 2010, made pursuant to the Port Security Regulations 2009, designates the boundaries of RPD and Avonmouth for security purposes. It also establishes the Port of Bristol Security Authority. The Chief Officer of the Port Police also acts as the Port Facility Security Officer, as defined in the International Ship and Port Facility Security Code (**ISPS**). The ISPS is a series of special measures to enhance maritime security, contained in the International Convention for Safety of Life at Sea (SOLAS) Chapter XI-2 and transposed into English law by EU regulation.

4. **SERIOUS DETRIMENT**

Statutory undertaker's land

- 4.1 BPC's land has been acquired by BPC as a statutory undertaker for the purposes of its undertaking. The land is used for the purposes of carrying on BPC's statutory undertaking, or the land is held for those purposes.
- 4.2 BPC's land is therefore land to which section 127(1) of the Planning Act 2008 applies. Further, in BPC's view, the Secretary of State could not be satisfied that serious detriment to the carrying on of BPC's statutory undertaking would not occur in consequence of the proposed acquisition of rights over BPC's land sought by the Applicant in the DCO.
- 4.3 Land lost to the Applicant's proposed development could not be replaced. Even if it could, significant planning and other constraints would deny BPC the ability to utilise it for operational port purposes.
- 4.4 So far as they affect BPC's land, the compulsory acquisition powers sought by the Applicant include those of outright purchase (of land, subsoil and/or airspace at NSC's option), of the imposition of rights and of restrictive covenants, of the extinguishment and overriding of rights and other interests and of possession during construction. All land affected by these compulsory acquisition powers forms part of BPC's operational land held by it for the purpose of its statutory undertaking. This is the case regardless of any fencing currently erected by BPC to delineate particular areas. Any permanent encroachment on it – whether by works placed on the land, the acquisition of land or the imposition of rights over it or the removal or obstruction of accesses to it - will necessarily have a detrimental effect on that undertaking now and in the future. Therefore the Examining Authority will need to be satisfied that all the powers sought may be exercised without any serious detriment to BPC's statutory undertaking. On the basis of the draft DCO as currently drafted, BPC considers this condition cannot be met.

Temporary and permanent rights

- 4.5 BPC has found it very difficult to establish, in some cases, the particular purposes for which temporary or permanent rights over its land are being sought.
- 4.6 In Schedule 10 to the draft DCO, the right of way sought over plot 05/75 is stated simply to be in connection with access to "neighbouring land". Since no more detail is given of the location or extent of this neighbouring land BPC has no way to assess the likely nature or intensity of the use and how that could affect its operations on its adjoining land during construction and in the future.
- 4.7 BPC is particularly concerned about what appear to be extensive rights sought to use, and to carry out works to, the track which leads from Marsh Lane around the perimeter of the Port towards the M5 both during construction and then in the future. This track is used frequently by BPC and others in connection with the Port and vehicular access to it is carefully controlled (by secured access gates) in order to preserve the security of the adjacent vehicle storage compounds. The information about the intended use of the track in the various DCO documents is once again unclear and conflicting as between the draft DCO itself and the Statement of Reasons (**SoR**)(document 4.1).
- 4.8 Similarly, in relation to the rights sought to run trains over BPC's private rail link (including plots 05/104, 05/107, 05/108, 05/165, 05/171, 06/25 and 06/55) these are expressed in Schedule 10 to the draft DCO in a way that does not limit the nature of the trains or allow for any constraints

whatsoever on the frequency and timings of use. The draft DCO documents portray the use of the rail link needed to be limited to use by RRVs in connection with specified rail works in the vicinity and then for future rail maintenance. However, the rights sought are not confined to use of the rail link by RRVs, instead permitting access for any train simply to access the rail network. Despite statements in the Construction Traffic Management Plan (doc 8.13) (**CTMP**) that any use of BPC's rail infrastructure for the movement of ballast and spoil would only be by agreement with BPC, the rights sought are so widely couched that they might be seen as an attempt to gain access to that infrastructure without such agreement.

- 4.9 BPC will not agree to this ill-defined and uncontrolled use of its assets. It cannot sensibly operate its statutory undertaking, including its rail link, unless it can control and, to the extent necessary constrain, its use by a third party. Use of the rail link by any third party, both during construction and in the future, must be tightly controlled and the provisions of the draft DCO at the moment provide no controls at all.
- 4.10 Overall therefore, the draft DCO provisions do not provide the protection needed by BPC in relation to these and other access rights. BPC therefore requires the inclusion of Protective Provisions of the kind referred to at 6.2 so that proper controls can be agreed over the proposed use of its land and assets.

Temporary possession

- 4.11 BPC has found it similarly hard to understand the particular purposes for which power of temporary possession of its land are being sought. There are many conflicts as to these purposes between the information in Schedule 12 to the draft DCO and those in the SoR. For example, in relation to the land in plot 05/170 which it is proposed to be the subject of Work No. 16A (construction compound under the M5) the SoR states the areas and hence the compound are needed in relation to Works 1, 1A, 1B and 1C and 20A and 22, all of which are rail-related works. That would be consistent with the description of the proposed purpose of the compound in the CTMP, being predominantly in connection with the use of RRVs. However, Schedule 12 to the draft DCO then seeks to permit the compound also be used in connection with further works, namely Works Nos. 16, 16B, 16C, 16D, 18 and 19, all of which could be served from the Lodway Farm compound. Many other examples of similar inconsistencies exist.
- 4.12 There are also inconsistencies between the purposes stated for particular areas and works shown on available works plans. For example, in Schedule 12 to the draft DCO, "*environmental mitigation*" is stated as a reason possession of plots 03/76, 04/06, 04/07 and 04/08 is required, but neither the Environmental Masterplan (document 2.53) nor the Railway Landscape Plans (Disused Line) (document 2.10) contain any requirement for positive environmental measures in this area. It seems to BPC that, in fact, the only access NSC might require to these areas is for the purpose of erecting a fence along the new railway line (although oddly this is not stated in Schedule 12 for all these plots), but the draft DCO powers sought exceed this and allow NSC, if it wished, to carry out permanent environmental mitigation works on BPC's land. There are many other examples of similar inconsistencies and in some cases, the extent of the areas over which possession is sought seem excessive given the work apparently intended.
- 4.13 BPC also notes that the extent of work for Work No. 14 on the works plans extends into plot 04/55 which is an area subject to powers of temporary possession only. This is not appropriate. The design for Work No. 14 shown on drawing 467470.BQ.04.20-530 Rev H (National Cycle Network (NCN) Temporary and Permanent Works Plans (document 2.37) confines the work to the current highway within plot 04/60. The extent of work should not

extend beyond this area on plot 04/60 since that would permit permanent works to be left on BPC's land. The same issue arises in relation to Work No. 16.

- 4.14 BPC also notes (from drawing 674946.BJ.35.01-06 Rev H in the Railway Landscape Plans (Disused Line) (document 2.10)) that new tree planting is proposed on its land forming part of temporary possession plot 05/28 between the Port perimeter track and the railway. BPC objects to this proposed planting because of the damage that could be caused to the track by the roots of the trees.
- 4.15 BPC needs certainty as to what its land is needed for and for how long. Otherwise it may be deprived of its possession or find its operations disrupted by activities on the various working areas and on the roads used by its customers to access the Port. It must also be sure that its operational land will be returned in the same state as when possession was taken, without permanent works having been constructed on it (except where agreed in relation to specific Works) and without vegetation (some of which is present as a deliberate buffer to protect secure storage areas and some of which plays a role in biodiversity at the Port) having been removed or added unexpectedly. Inconsistencies about the proposed use of land in the DCO documents make it impossible for BPC to rely solely on the main provisions of the DCO to protect its operations and undertaking and necessitate the inclusion of Protective Provisions of the kind referred to at 6.3 to 6.11 below, so that NSC's exercise of its powers of temporary possession and other powers which will affect BPC's operations can reasonably be controlled, including through the agreement of and then adherence to a more detailed works programme which specifies the purposes for which the various areas of land may be required. If the proposed use of the compound under the M5 were to be authorised, BPC would require this to be dealt with by way of a lease to the Applicant containing the appropriate controls.

Permanent deprivation

- 4.16 The extent of compulsory land acquisition powers sought over land which is part of or adjacent to public vehicular highways also appears excessive, particularly at Marsh Lane and Royal Portbury Dock Road. Even if permanent works are needed as part of the scheme affecting some parts of these roads, it has not been demonstrated satisfactorily that outright acquisition of wider areas of land - necessitating BPC and others being compulsorily deprived of their interests in those areas - is needed as a result. NSC should justify why it is necessary that in relation to these areas (unlike other areas of highway) it should hold an interest beyond that normally vested in a local highway authority by dedication and adoption and, to the extent in a particular case it may consider further interests are needed, why that need cannot be met by the grant of lesser interests than outright acquisition.
- 4.17 In addition, as discussed at 7.3 below BPC considers that NSC's description in the Statement of Reasons (SoR) that the land of this sort that it is seeking to acquire is "existing highway" is in many cases incorrect and therefore inadvertently misleading as to the effect its acquisition will have on the current landowners.
- 4.18 Without detracting from these general objections, BPC specifically objects to the proposed acquisition of plot 05/50 since part of the land in this parcel is required by BPC to provide access for the electronic communication operator to its adjacent mast. Unless this access is available, the operator would have to gain access through BPC's secure operational vehicle transit storage compounds, which would not be acceptable.

5. **OTHER SPECIFIC CONCERNS**

Loss of safeguarded and operational land

- 5.1 The DCO includes compulsory acquisition powers in respect of an area of land adjacent to BPC's boundary (to the south of the railway and to the east of Marsh Lane) for Flood Mitigation and Pond with associated ecological works (Work Nos. 16B and 16D). The land that NSC seeks is specifically safeguarded for port development within NSC's adopted planning policy in recognition of the need of the Port for additional land for development at Royal Portbury Dock. Despite that designation, it appears no assessment has been made of the effect on BPC of this land no longer being available for development, including by virtue of the access rights being sought over large parts of BPC's adjacent land (see below). In the absence of any provision for alternative land being made available to meet the needs identified by the planning policy, it follows that BPC objects to all of this safeguarded land (plot 05/85) being taken and used for purposes ancillary to the DCO scheme.
- 5.2 BPC also objects to the proposed permanent right of access from Marsh Lane over BPC's adjacent land which will further reduce BPC's operational land.

Marsh Lane perimeter track

- 5.3 The draft DCO permits the creation of a permanent road-rail access point at the location where the perimeter track meets BPC's privately-owned railway within the RPD Estate. The DCO envisages the Applicant/Network Rail acquiring permanent rights over the perimeter track to bring road and rail vehicles to the access point, and further permanent rights for Network Rail's engineering and other works trains to pass over BPC's private railway for the benefit of the national rail network generally. Unspecified works are proposed to BPC's level crossing to create the access point and further (unspecified) works are suggested for the perimeter track. NSC also requires an area of BPC's land under the M5 bridge on a permanent basis in support of the use of the access point. These proposals will adversely interfere with BPC's use of the track and its private rail link.
- 5.4 The proposed use during construction of the track around the perimeter of part of the RPD Estate between Marsh Lane and the M5 overbridge for HGV traffic (ref Compounds, Haul Roads and Access to Works Plan Sheet 5 – Access Point AW 5.1) conflicts with other regular vehicular use of the track by BPC and others including CLH, Highways England and contractors working on the National Grid Hinkley C Connection project. All of those rights of access and use must be preserved.
- 5.5 The effect of the use of the track on the security of the RPD Estate is also a significant concern because the track runs alongside BPC's principal security fence and also affords access to the Port's rail link.
- 5.6 BPC is also unclear whether the Applicant's proposal includes use of the track by HGVs and/or for carrying out any work to the track and, if so, what work is proposed. BPC must have an absolute right to approve any works and to control access and use of the track

Rail crossing

- 5.7 The draft DCO would permit closure of BPC's private crossing that connects operational land to the north and south of the disused railway in the vicinity of Court House Farm and makes no provision for any alternative access between those sites. Closure of the crossing will clearly constitute an unacceptable interference with BPC's operations and statutory undertaking.

Rail access

- 5.8 BPC has previously expressed concerns about the extent of the rights sought by the Applicant over its freight rail line and the works proposed there, and has sought assurances that both during the construction of the scheme and once the new passenger service is in operation, access for freight traffic between the Port and the national rail network will not be restricted.
- 5.9 The draft DCO makes no adequate provision to prevent interference with rail access for freight traffic to and from the Port during construction. Nor does it protect BPC's freight rail paths from being adversely affected by the Applicant's proposals. The absence of appropriate provisions means that the DCO fails to address the serious detriment to BPC's statutory undertaking that will result if reliable and timely access for rail freight traffic to and from the Port is not maintained.
- 5.10 The proposed location of a construction compound on BPC land beneath the M5 overbridge will interfere with the need for access (by BPC and others) and impair the security integrity of the RPD Estate (ref Compounds, Haul Roads and Access to Works Plan Sheet 5).

Network Rail

- 5.11 To date, Network Rail has not participated in any meaningful discussions with BPC about the construction and future operation of the new branch line, so BPC cannot assess the effects of the proposed arrangements for Network Rail:
- 5.11.1 to have access after completion of construction along the track leading from Marsh Lane in order to access the RRAP (Work No. 16C);
 - 5.11.2 to maintain, use, transmit, retain, renew, repair, replace, inspect and remove railway signalling and communications apparatus on BPC's rail link to the Port;
 - 5.11.3 to have rights of access over plot 3/78 and plot 5/75 to access the cattle creep located on plot 5/86 for the purpose of its maintenance and inspection.
- 5.12 In any event, BPC requires controls over:
- 5.12.1 the design of the proposed rail link realignment works (Work No. 1C) so far as they are on or within 5 metres of BPC's property;
 - 5.12.2 the design of the proposed RRAP works at the rail link level crossing (Work No. 16C); and
 - 5.12.3 the extent of the proposed installation of signalling and related equipment on the rail link (Work No. 19).
- 5.13 Adequate controls in favour of BPC are also critical in order to ensure that serious detriment to the operation of the Port is avoided that the use and maintenance of BPC's rail link and its train paths are not adversely affected.
- 5.14 BPC requires legally binding commitments from Network Rail as to availability of future train paths for trains departing from and arriving at RPD.

Construction

- 5.15 The DCO must require the Applicant to comply with, and procure that each of its contractors comply with, a construction protocol in order that the effect of construction activities on the operation of the Port and BPC's statutory undertaking is minimised.

PROWs

- 5.16 BPC has previously expressed concern about the various works proposed affecting the network of public bridleways/cycleways which it has created in and around the RPD Estate, including proposals to add to that network by creating and imposing further public rights of way over BPC's land.
- 5.17 The draft DCO proposes alterations to the existing infrastructure at Royal Portbury Dock Road and the creation of new public paths near Marsh Lane and close to the M5 bridge embankment, involving the compulsory acquisition of BPC land. BPC does not accept that a need for these works has been demonstrated, either at all or such that the works proposed can properly constitute associated development. The existing dedicated public paths, the routes and specification of which were agreed with NSC, provide a complete public bridleway/cycleway route towards Pill. After construction of the branch line has completed, those paths will continue to be available as they are now, so no works to or to supplement them are necessary.
- 5.18 It is in any case inappropriate that BPC should be permanently and compulsorily deprived of land in order to provide additional public rights of way in substitution for routes which are currently only permissive and for which the existing (dedicated) public path network already provides an adequate alternative.
- 5.19 Currently BPC is responsible for the maintenance of bridleway/cycleway LA8/67/10 (between Marsh Lane and the M5) and footpath LA8/68/10. If use of the track is permitted, given the additional use that would be imposed on these PROWs by the construction and future maintenance and operation of the authorised development, the Applicant, as local highway authority, must, from the making of the DCO, assume responsibility (in place of BPC) for the future maintenance of the whole of bridleway/cycleway LA8/67/10 of and footpath LA8/68/10 up to the turning circle which the Applicant seeks to create under the M5 if, despite BPC's concerns noted above, the latter were to be permitted.
- 5.20 However, BPC is concerned about the potential conflict between the proposed turning circle (if permitted) and the continued use of footpath LA8/68/10 the route of which crosses that turning circle. BPC considers the route of footpath LA8/68/10 should be diverted to avoid this conflict.
- 5.21 Drawing 674946.BQ.42.01-544 Rev F in the Public Rights of Way Plans) (document 2.33) shows two bridleway 'spur' routes leading to the west side of Royal Portbury Dock Road. Work No. 14 is stated in Schedule 1 to the DCO to be carried out as an improvement to LA15/21/20 but from the drawing in document 2.33 that appears to be an incorrect reference for the particular part of the bridleway emerging on to the road. Further from the plans attached to the original dedication agreements held by BPC it appeared the western of the two spur routes was that referenced as LA8/65, not the eastern route as drawing 674946.BQ.42.01-544 Rev F shows. The western route (LA8/65) was created later than the eastern route, presumably in substitution for it. It seems unlikely two paths anyway exist today. BPC asks that the Applicant confirms the correct position so that BPC can consider any action that may be required.

6. PROTECTIVE PROVISIONS IN DCO: MAIN PROVISIONS

The protective provisions in the draft DCO must be amended to address BPC's concerns, including as set out below.

6.1 Powers: general

- 6.1.1 For the purpose of the Protective Provisions, the expression "undertaker" must include all persons to whom powers are transferred or who may exercise the DCO powers pursuant to the DCO or any agreement.
- 6.1.2 BPC must be given at least 28 days' notice of any intended application under article 10 to transfer the benefit of the DCO or any part of it, accompanied by details of the application and contact details for the person acting for the Secretary of State.
- 6.1.3 No agreement made under article 11 may allow the exercise by either Network Rail Infrastructure Limited (**NRIL**) or NSC of any powers and rights under any BPC agreement or affecting any of BPC's property which that party would not have but for the DCO or any agreement made under it. For these purposes, a "BPC agreement" means any contract, licence, easement and other agreement, permission and consent to which BPC is a party or of which it has the benefit.
- 6.1.4 No part of BPC's property or the land over which the rail link runs shall be or become operational railway land or currently operational railway land for the purpose of the DCO or form part of the railway authorised by the DCO to which article 39 applies.

6.2 Compulsory acquisition

- 6.2.1 No powers of compulsory acquisition may be exercised over, in respect of or so as to affect:
 - (a) any of BPC's property;
 - (b) any of BPC's apparatus;
 - (c) plots 5/95, 5/100 and 5/105; and/or
 - (d) plots 5/30, 5/61, 5/62, 5/65 and 5/70

without BPC's consent in each case.

This includes powers under articles 24 (compulsory acquisition of land), 27 (compulsory acquisition of rights or imposition of covenants), 28 (private rights over land subject to compulsory acquisition or temporary possession), 29 (power to override easements and other rights), 31 (acquisition of subsoil or air-space only), 32 (rights under or over streets), 34 (temporary use of land for the purpose of maintaining the authorised development) article 37 (statutory undertakers and electronic communication code network operators) and section 271 of the Town and Country Planning Act 1990.

- 6.2.2 In addition, no rights vested in BPC over plots 05/95, 05/100, 05/105, 05/122, 05/137, 05/140 and 05/141, 06/15, 06/20, 06/55, 06/60, 06/80, 06/10, 06/175 and 06/195 may be extinguished (whether under the DCO or under section 271 of the 1990 Act).
- 6.2.3 The undertaker must not remove or re-position any of BPC's apparatus without BPC's consent and none of BPC's apparatus may be acquired other than by agreement.

- 6.2.4 Nothing in the DCO (including article 21) affects BPC's right to use the Court House Farm at grade crossing or the provisions of the Deed of Grant of Easement dated 4 September 2017 made between Network Rail and First Corporate Shipping Limited t/a The Bristol Port Company or any other agreement relating to the Court House Farm terminable access.

6.3 Use of land and temporary possession

- 6.3.1 No powers of temporary possession may be exercised over the following plots.

Plot
5/103, 5/170 (under M5 bridge)
5/25, 5/28 (to the extent it runs between the railway and the track from Marsh Lane), 5/95, 5/100, 5/105, 5/106, 5/112 and 5/113 (track from Marsh Lane)
5/104, 5/107, 5/108, 5/165, 5/171, 6/25, 6/55 (rail link)
5/75 (Court House Farm access)

- 6.3.2 Powers of temporary possession under the DCO must be exercised only in accordance with:
- (a) such conditions, terms and measures as may be agreed by BPC for the purpose of the Protective Provisions; and
 - (b) a works programme and construction protocol in terms to be agreed between the undertaker and BPC.
- 6.3.3 The undertaker must not exercise temporary possession powers in respect of any part of BPC's property unless it has given BPC at least 10 working days' written notice of its intended entry onto that part.
- 6.3.4 The undertaker must proceed diligently with the works and use all reasonable endeavours to comply with the works programme. In particular it must use all reasonable endeavours to give up possession of each part of BPC's property on or before the anticipated date for so doing set out in the works programme and must in any case give up possession within three months of completing construction of the relevant works for which possession of that property was required.
- 6.3.5 Unless agreed by BPC, none of BPC's property is to be used as a storage facility for materials or other items or for car parking.
- 6.3.6 No buildings or other structures on BPC's property may be demolished or removed.
- 6.3.7 Except to the extent BPC agrees (which includes the matters provided for in the documents referred to below), no works may be carried out on BPC's property (including any fencing, any works as mentioned in Schedule 1 to the DCO or any mitigation works, ground or rock stability, geotechnical or strengthening works) other than works of a temporary nature.
- 6.3.8 The undertaker must make good all damage and wear and tear caused to BPC's property which is used in connection with the works. If required by BPC, the undertaker must carry out surveys to show the condition of the relevant land before and after the undertaker's use.

6.3.9 Before giving up possession of any part of BPC's property the undertaker must to BPC's reasonable satisfaction:

- (a) except to the extent BPC agrees (which includes the matters provided for in the documents referred to below) remove all works (including all fencing and all parts of Work Nos. 15 and 20) from that property; and
- (b) restore and reinstate the property and any buildings and structures on the property to at least as good a condition as they were in before possession was taken (including making good the subsoil and surface) and make good any damage caused to surrounding land.

6.3.10 The undertaker must take all steps and measures reasonably available to it to minimise the impact of construction and other activities on BPC's property, on the operation of the Port and on the activities of the occupiers of that property and other customers of the Port.

6.4 **Construction operations**

No operations involving train loading or unloading at or adjacent to the Lodway Farm construction compound must take place other than during periods first agreed by BPC.

6.5 **Access**

6.5.1 No part of BPC's property is to be used for construction access, including the creation or use of haul roads. The powers under article 17 to construct accesses AW5.1 (Marsh Lane) and AW5.3 (Court House Farm) must not be exercised.

6.5.2 No powers may be exercised under the DCO to create or improve any means of access affecting any private road, path or public right of way on BPC's property, any dock public road or any other part of BPC's property.

6.6 **Roads and streets**

6.6.1 In this section "dock public road" means each of Royal Portbury Dock Road (including the roundabout at its junction with Portbury Way and Gordano Way), Marsh Lane, Redland Avenue, Gordano Way, Garonor Way and Portbury Way.

6.6.2 No powers may be exercised under article 13(1) or (2) (street works and power to alter the layout etc of streets) in respect of or so as to affect any private road, path or public right of way on BPC's property (including the track leading from Marsh Lane) or any other part of BPC's property.

6.6.3 No powers may be exercised in respect of or so as to affect any dock public road:

- (a) under article 13(1) unless BPC has first been consulted; or
- (b) under article 13(2).

6.6.4 BPC's prior approval (not to be unreasonably withheld or delayed) must be obtained to all works to be carried out under article 13(1) which affect any dock public road.

6.6.5 No powers may be exercised under article 15 (temporary stopping up of streets and rights of way) or article 46 (traffic regulation) in respect of:

- (a) any private road on BPC's property;
- (b) any footpath or bridleway or cycle path on BPC's property:

- (i) except, if use of the track is permitted, for the temporary stopping up under article 15 of the parts of bridleway LA8/67/10 and footpath LA8/68/10 referenced in Part 2 of Schedule 5 to the DCO; and
 - (ii) unless a suitable diversion has been provided; or
 - (c) any dock public road without BPC's consent, not to be unreasonably withheld or delayed.
- 6.6.6 Except with BPC's agreement, no part of any private road or public right of way on BPC's property or any dock public road may be authorised for use as a temporary working site or a parking place under article 15 or article 46.
- 6.6.7 In the exercise of any powers under the DCO:
- (a) pedestrian and vehicular access (including access for cargo operations) to and across any of BPC's property (including over any private road) must not be interfered with or obstructed and
 - (b) access to and the use by traffic of any dock public road must not be materially impeded.
- 6.6.8 No powers may be exercised under article 13, article 15 or article 46 in respect of any part of BPC's property or any dock public road after the completion of construction.
- 6.7 PROWs**
- 6.7.1 Throughout the construction period, BPC's responsibility for maintenance of the PROWs within the DCO order limits will be suspended.
- 6.7.2 The undertaker must make good all damage caused to any PROW on BPC's property resulting from the works and/or the exercise of any powers under the DCO.
- 6.7.3 BPC's liability for maintenance of any part of a PROW shall be extinguished from the date of acquisition by the undertaker (whether compulsorily or by agreement) of the land on which that part of the PROW is situate.
- 6.8 Surveys**
- 6.8.1 No powers conferred by article 23 (authority to survey and investigate land) or section 11(3) Compulsory Purchase Act 1965 shall be exercised in respect of any of BPC's property outside the order limits except to the extent that BPC agrees (and then for the purpose only of carrying out non-intrusive surveys and, investigations and monitoring).
- 6.8.2 The powers may be exercised only to the extent necessary in connection with the authorised development and by prior agreement with BPC on each occasion (such agreement not to be unreasonably withheld or delayed) and on at least 14 days' notice.
- 6.8.3 BPC may in any case refuse access on any occasion for operational reasons, in which case BPC will seek to offer alternative arrangements.
- 6.8.4 BPC must be provided (in an electronic format) with copies of all survey and ground investigation reports carried out in respect of any of its property, which BPC may use

and provide to others (on a non-reliance basis) in connection with works and operations at the Port.

6.9 Works

- 6.9.1 No part of Work No. 14, if constructed, or any ancillary work associated with it must be constructed or maintained on plot 4/95.
- 6.9.2 No ancillary work associated with any relevant work must be constructed or maintained on BPC's property outside the limits of deviation or the extents of work (as the case may be) shown on the works plans for that relevant work.
- 6.9.3 The undertaker must use its best endeavours to ensure that all parts of the authorised development which are to be constructed on BPC's property are constructed and installed in the lines and situations shown on the works plans and (where applicable) any design drawings.
- 6.9.4 In carrying out the authorised development on BPC's property:
- (a) the undertaker may deviate laterally from the lines and situations shown on the works plans and (where applicable) design drawings to a maximum extent of 0.5 metre in each direction (or to such other extent as may be agreed by BPC);
 - (b) Work No. 1C, if constructed, must be constructed at the levels shown on the section drawings; and
 - (c) except to the extent BPC may agree, all other relevant works must be constructed a level which is between current ground level in the relevant location and 0.5 metres above that current ground level.
- 6.9.5 BPC's prior approval will be needed to the details of all parts of the authorised development as are on or within 5 metres of, or may adversely affect, BPC's property or any dock public road. This includes all proposals for vegetation clearance and environmental mitigation and restoration measures.
- 6.9.6 BPC may, acting reasonably and as a condition of its approval on any occasion, specify additional or amended environmental mitigation measures which are needed on or in respect of BPC's property as a result of the works, which measures must be implemented by the undertaker at its cost.
- 6.9.7 BPC will have the right to require protective works and other alterations to its property which are needed as a result of the works to be carried out at the undertaker's expense (or in certain circumstances by the undertaker). The undertaker will also be responsible for BPC's increased costs in relation to maintaining any such works and alterations.
- 6.9.8 The undertaker must reimburse all BPC's costs in connection with BPC's approval and supervision of the works, payment to be within 14 days of invoice.
- 6.9.9 The undertaker must indemnify BPC in respect of all costs, expenses, loss and damage (including damage to BPC's property and any interference or obstruction caused to its operations) arising out of:
- (a) the works, their execution, maintenance and operation;

- (b) any failure of or fault in those works; and
- (c) the activities of any person on BPC's property in connection with the construction and maintenance of the authorised development.

6.10 **Drainage**

- 6.10.1 The undertaker must not without BPC's consent, such consent not to be unreasonably withheld or delayed:
- (a) use or discharge water into any watercourse belonging to or used by BPC (other than a public sewer or drain); nor
 - (b) make any crossing over, opening or connection into or culvert any such watercourse or lay down, take up or alter any pipes for that purpose.
- 6.10.2 Without limitation, BPC's consent if given may be subject to reasonable conditions as to the quantities of water permitted to be discharged and as to the duration of any use of the relevant watercourse.
- 6.10.3 BPC's prior approval (such approval not to be unreasonably withheld or delayed) must be obtained to the detail of any works to create, alter or remove any culvert or other crossing over, under or affecting any watercourse or drainage ditch on BPC's property or which drains water to or from BPC's property.
- 6.10.4 In exercising any power under article 22 (discharge of water), the undertaker must not damage or interfere with the bed or banks of any watercourse on BPC's property.

6.11 **Landscaping**

- 6.11.1 No tree planting may take place on any part of BPC's property.
- 6.11.2 Without detracting from 6.11.1, the undertaker must not remove, cut back, fell or lop any hedge, hedgerow, tree, shrub or other vegetation on BPC's property or undertake any replacement planting without obtaining BPC's prior approval, such approval not to be unreasonably withheld or delayed. BPC may, acting reasonably and as a condition of its approval on any occasion, specify additional or amended environmental mitigation measures which are needed on or in respect of BPC's property as a result of the works, which measures must be implemented by the undertaker at its cost.

7. LAND PLANS AND THE BOOK OF REFERENCE

7.1 BPC has the following comments on the detail of these documents.

7.2 Boundaries and interests

7.2.1 Plot 03/47: the reference to BPC having an interest under a lease in respect of his land is incorrect. BPC no longer owns the lease to which the entry may have related.

7.2.2 Plot 03/67: the reference to BPC having an interest under a lease in respect of his land is incorrect. The lease has been surrendered.

7.2.3 Plot 03/79 and 03/81: the revised Book of Reference (**BoR**) submitted at deadline 1 included two new plots 3/79 (stated as owned by BPC) and 3/81 (in which BPC is stated to have an interest as lessee) but these areas are not shown on the land plans (which have not been revised). Amendments were made to the description of other plots which may be in the vicinity. BPC would request that the Applicant confirms the location of these two new areas and the extent of any other adjustments being made to the land plans.

7.2.4 Plot 04/50: the Applicant is asked to check and confirm the boundary of this plot with BPC's adjoining land which is occupied under a lease by a Port customer. BPC is concerned the boundaries may overlap. BPC has also noted that drawing 674946.BJ.35.01-05 Rev H in the Railway Landscape Plans (Disused Line) (document 2.10) shows fencing being constructed in two places beyond the DCO order limits in the vicinity of plot 04/50. The Applicant should please check and clarify.

7.2.5 Plot 04/90: the southern boundary of this plot with plot 04/95 seems incorrectly drawn. BPC considers plot 04/95 currently includes some land comprised within its registered titles AV236682 and AV245885.

7.2.6 Plot 05/10: the boundary of this plot with 05/11 is incorrect. Part of the land at the southern end of plot 05/11 on its western side falls within BPC's registered titles AV236682 and AV213535. The boundary should be adjusted so that BPC's land is included within plot 05/10 and not subject to compulsory acquisition.

7.2.7 Plot 05/26: there appears to be a small error in the alignment of the proper boundary of this plot with plot 05/30 at its southern end. A small part of plot 05/30 falls within BPC's adjacent registered title and should therefore be excluded from plot 05/30 and added to plot 05/26.

7.2.8 Plot 06/61: a small part of this area is subject to a lease to Easton-in-Gordano Parish Council, which is not noted in the BoR.

7.3 Highways issues

7.3.1 Powers of compulsory acquisition are proposed over a large number of plots of land in the vicinity of the bridges that carry each of Royal Portbury Dock Road and Marsh Lane over the (currently disused) railway. Some of these plots are owned by BPC, either wholly or as to the subsoil. Others will be subject to existing private rights of access for BPC. These areas must not be acquired by the Applicant if by doing so BPC's rights of access to its adjoining land are lost or otherwise adversely affected. In assessing the potential impact of the proposed acquisitions, BPC has been hampered by inconsistencies in the available information about the current extent of

the public highway in the relevant areas, particularly by discrepancies between highways plans previously provided by the Applicant to BPC, statements in the BoR and statements set out in the SoR.

7.3.2 In relation to issues of ownership, several plots (the title to which is unregistered) were expressly included in a transfer to BPC from The City Council of Bristol in August 2015 (referred to below as the 2015 transfer), in each case to the extent they did not comprise the carriageway or footway of public vehicular highways. A copy of this transfer, including its plans, is available from the Land Registry and is noted on the registered titles to BPC's lands adjacent to the roads. The 2015 transfer does not appear to have been taken into account in preparing the BoR.

7.3.3 BPC's resulting comments are as set out below.

7.3.4 **Royal Portbury Dock Road**

- (a) Plot 04/60 is treated in the BoR and the SoR as existing highway. A small part of 04/60 along its western edge is not highway. Part of the affected area should in fact be included in plot 04/55 since BPC considers it falls within BPC's registered titles AV236677 and AV213530. The plots should be adjusted so that no part of BPC's land falls within the area for compulsory acquisition (04/60) and the highway status of the areas checked and clarified.
- (b) Plot 04/80 is treated in the BoR and the SoR as existing highway but a small part on its southern edge appears not to be highway. The boundaries of the highway in relation to the plot should be checked and clarified.
- (c) While most of 04/85 (owned by BPC) is highway, a small part of it is not highway, that part probably comprising what is now the bridleway, although the detailed boundaries are unclear. The BoR does not clearly seem to treat any of 04/85 (other than the bridleway) as highway, although the SoR does so: in giving its reason for acquisition it is stated to be 'part of the existing highway' and is described as "The highway of Royal Portbury Dock Road". The status and boundaries of the highway in relation to the plot should be checked and clarified.
- (d) The boundary between plots 04/85 and 04/95 in the south eastern corner of 04/85 seems incorrect. In BPC's view, a small part of 04/95 should be included in 04/85 since it forms part of BPC's adjacent title. The boundary should be checked and confirmed.
- (e) As owner of the lands on either side of Royal Portbury Dock Road (including plots 04/55, 04/85 and 04/90) BPC's claim to the subsoil of the majority of plots 04/60 and 04/65 and part 04/80 should be noted. In addition, the majority of plots 04/60 and 04/80 were included in the 2015 transfer.
- (f) The whole of plot 04/74 was included in the 2015 transfer, so BPC's claim to the subsoil should be noted.

7.3.5 **Marsh Lane, north of the railway**

- (a) According to the highways records in BPC's possession, part of plot 05/30 immediately adjacent to the access track off Marsh Lane is public highway.

If that were not the case, BPC would have rights of access over it, by prescription or otherwise. The BoR does not refer to any of this plot being highway, but the SoR states that all of it is and that this is the reason for its acquisition. These positions are contradictory and neither seem correct. The position should be checked and clarified.

- (b) Equally, the SoR states that each of plots 05/06, 05/11 and 05/31 is existing highway, which is the reason given to justify acquisition. Again, this is not correct from the highways records BPC has seen, nor is that position reflected in the BoR. The position should be checked and clarified.
- (c) The BoR records that plots 05/06 and 05/11 include part of bridleway LA8/66/10. Based on both the land plans mapping and the applicable dedication agreement, this seems incorrect.
- (d) The boundary between plots 05/10 (owned by BPC) and 05/11 seems incorrect. In BPC's view, part of 05/11 is within its adjacent registered title and should be included within 05/10. See also above in relation to the highway status of this area.
- (e) BPC is attributed ownership of the subsoil of plot 05/16. The basis of this should be confirmed, if ownership of plot 05/30 has been correctly attributed to NRIL.
- (f) The owner of the subsoil of 05/17 is noted as unknown. As owner of the adjacent land on either side of Marsh Lane BPC's claim to the subsoil of this plot should be noted.
- (g) The owner of plot 05/18 is noted as unknown and the BoR and SoR each state it to be highway. In BPC's view it falls within its registered titles AV213537 and AV236684 and is not part of the highway. The title and highways boundaries should be checked and the position confirmed.

7.3.6 **Marsh Lane, south of the railway**

- (a) The SoR states that plot 05/50 (and 05/41) is existing highway, which is the reason given to justify acquisition. This is not correct from the highways records BPC has seen, nor is that position reflected in the BoR. The position should be checked and clarified.
- (b) Conversely, plots 05/61, 05/62 and 05/70 are not identified in either the BoR or the SoR as highway, whereas BPC's records show that they all are. Plot 05/65 is stated in the SoR to be highway, but this is not stated to be the case in the BoR. BPC's records indicate that the majority of the plot is highway. These plots together form part of the access to the adjacent plot 05/75 site which NSC proposes to use. The position should be checked and clarified. In addition, BPC's access rights (noted as applying to plot 05/70) should be noted also as applying to plots 05/61, 05/62 and 05/65.

7.3.7 BPC believes it would assist the resolution of all these highway related issues if NSC, as local highway authority, could produce up-to-date and detailed plans of the extent of the public highway in the areas concerned. However, unless and until these issues are resolved to BPC's satisfaction it will require Protective Provisions so as to enable matters to be regularised and BPC's access rights preserved.