

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

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

Note on behalf of First Corporate Shipping Limited trading as The Bristol Port Company for the Compulsory Acquisition Hearing 4 December 2020

Introduction

1. This note is submitted on behalf of First Corporate Shipping Limited, trading as The Bristol Port Company (**BPC**), which is the statutory undertaker (harbour and competent harbour authority) for Bristol and the owner and operator of the commercial port of Bristol (**Port**).
2. In our letter of 23 November, submitted for Deadline 2, we indicated that while BPC considered it inappropriate, for the reasons given in that letter, for compulsory acquisition matters relating to the Port to be dealt with at the Compulsory Acquisition Hearing on 4 December 2020, BPC would, in advance of the hearing, provide the Examining Authority with a note updating the Examining Authority as to progress of discussions between BPC and the Applicant so far as they relate to compulsory acquisition matters.

Work 16D

3. BPC notes that the revised draft Development Consent Order submitted by the Applicant at Deadline 2 proposed the removal from the DCO of the powers previously sought in relation to Work 16D (Flood Mitigation). BPC confirms that the Applicant consulted with it about the need for Work 16D and that BPC is content for Work 16D not to proceed.
4. BPC understands that, were the ExA to accept the removal of Work 16D from the DCO, the Applicant would propose further changes to the Land Plans and Book of Reference so as to remove the part of the current parcel 05/85 which lies to the west of the Easton-in-Gordano stream from the area over which the Applicant seeks powers of compulsory acquisition of all interests. However the Applicant would instead seek powers in respect of the acquisition of a permanent right of access over the released part of the parcel to access the remainder of the parcel.
5. In the absence of final details of these further changes proposed, and the nature and extent of the rights still to be sought, BPC necessarily reserves its position in relation to these matters and the effect any revised proposals would have on the issues identified in paragraphs 5.1 and 5.2 of BPC's written representation submitted at Deadline 2, and will continue its dialogue with the Applicant as to these matters.

Other matters

6. Since our 23 November 2020 letter, BPC has provided the Applicant (on a without prejudice and subject to contract basis) with full details as to how BPC's concerns about the scheme, including the proposals for powers of compulsory acquisition in respect of land at the Port, might be addressed, such that both BPC and the Examining Authority could be satisfied that all the powers sought may be exercised without any serious detriment to BPC's statutory undertaking.

7. The details provided to the Applicant reflect the issues raised by BPC in its written representations submitted at Deadline 2 and the previous and continuing constructive dialogue between BPC and the Applicant.
8. The details provided address, among other things, the terms of additional protective provisions that would be required if the test in 6 above is to be satisfied. In particular, as explained and set out in its written representation submitted at Deadline 2, BPC requires protective provisions to prevent powers of compulsory acquisition affecting the Port being exercised under the DCO other than with its consent, so that proper controls can be agreed over the proposed use of its land and assets.
9. BPC and the Applicant will be meeting shortly to discuss the details provided by BPC so that a dialogue can continue. While BPC remains cautiously optimistic that a satisfactory outcome can be reached with the Applicant, the Examining Authority should not assume that the road to reaching agreement will be straightforward.
10. The details provided by BPC to the Applicant also address the nature and terms of commitments that will be required from Network Rail Infrastructure Limited (NRIL). BPC awaits further engagement from NRIL in relation to these matters.
11. The Examining Authority should be aware that the principal point in contention with NRIL concerns the time from which the period allowed for BPC to construct an alternative crossing over the disused railway between areas of its operational land in the vicinity of Court House Farm should start. BPC considers that time should run only from the date on which the Applicant obtains Full Business Case Approval (FBCA) for the scheme. NRIL contends that time should run from the earlier date of that on which the DCO is made. BPC views NRIL's position as manifestly unreasonable because, without FBCA, the scheme cannot proceed and it would therefore be wholly wrong for BPC to be compelled at considerable cost to construct an alternative crossing within NRIL's suggested time period when there is no certainty that the scheme would be implemented. To date, NRIL has adopted an inflexible attitude to this issue, which has created a major obstacle to reaching any agreement.

Wedlake Bell LLP
3 December 2020