

**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**

**Comments by First Corporate Shipping Limited trading as The Bristol Port Company (BPC) on the Applicant's responses at
Deadline 3 to BPC's written representation**

19 January 2021

No.	Issue	Applicant's response	BPC's comment
BPC-D2-001	<p>1. INTRODUCTION</p> <p>1.1 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).</p> <p>1.2 BPC recognises the ambitions of North Somerset Council (NSC or Applicant) for the DCO scheme, but is concerned about the significant and disproportionate impacts that the scheme will have on its undertaking, which will also involve the permanent loss of land in BPC's ownership held for the purpose of its statutory</p>	<p>The Applicant is engaging with BPC to resolve its concerns.</p>	<p>BPC looks forward to continuing its dialogue with the Applicant.</p> <p>However, BPC is concerned that there remain many aspects of the Applicant's proposals where engagement from Network Rail is needed to explain or clarify the extent of works stated to be required or rights sought, and where, to date, the Applicant has been unable to confirm the position with sufficient certainty to enable BPC to understand and assess the effect of the proposals and determine whether, and how, BPC's concerns may be resolved.</p>

	<p>undertaking.</p> <p>1.3 BPC seeks material amendments to the draft DCO, including appropriately worded protective provisions.</p>		
BPC-D2-002	<p>2. CURRENT ASSESSMENT OF ISSUES</p> <p>2.1 The proposed development will have significant adverse impacts on BPC's land and the conduct of its commercial port activities now and in the future. BPC's objections include:</p>	<p>The Applicant is engaging with BPC to resolve its concerns. However the Applicant does not accept that serious detriment will occur as suggested by BPC. The Applicant has carefully prepared its application so as to minimise impacts on the Port and almost all of the land sought from the Port is at the margins of BPC's estate.</p> <p>Dealing with BPC's specific concerns:</p>	<p>As explained in relation to para 2.1.8 below, it is not correct to characterise the areas of the RPD estate where the Applicant seeks to undertake its works and exercise powers as being on the "<i>margins of BPC's estate</i>" and of no importance to carrying on BPC's statutory undertaking.</p>
	<p>2.1.1 the damaging effects on its business and statutory undertaking, including on the availability of rail paths; and the effects of future access rights sought;</p>	<p>2.1.1 The Order does not impact on the availability of rail paths. BPC's current allocation of rail paths (which is significantly underused) will not be affected by the operation of the proposed passenger service.</p>	<p>See comments below under BPC-D2-006, para 5.6.</p> <p>It is therefore not correct to characterise the areas of the Royal Portbury Dock (RPD) estate where the Applicant seeks to undertake its works and exercise powers as being on the "<i>margins of BPC's estate</i>" (see the Applicant's comments at BPC-D2-002 para 2.1 above BPC-D2-004 para 4 below) or of no importance to BPC simply because they are not within a vehicle storage compound. These areas form part of, and are used for important purposes in connection with, BPC's statutory undertaking.</p>
	<p>2.1.2 the loss of BPC's private crossing between its transit cargo storage areas on either side of the proposed railway;</p>	<p>2.1.2 Planning permission 16/P/1987/F dated 21 December 2016 for the site at Court House Farm at condition 16 provides that the temporary at grade crossing must</p>	<p>BPC refers to its comments submitted at Deadline 3 on the Applicant's response to ExQ1 CA.1.10.</p>

		close when MetroWest is constructed. Please see the Applicant's responses to BPC's concerns contained in the Applicant's submissions for Deadline 1 (Response CA.1.10, document REP2-013).	
	2.1.3 the lack of any adequate consideration of alternatives which would minimise the impacts on the Port;	2.1.3 The Applicant has considered a number of alternatives in resolving upon its impacts on BPC but is largely constrained by the location of the existing railway formation which is to be utilised for the DCO scheme. The Applicant does not however believe that BPC is significantly impacted by the DCO Scheme, which has fully taken in to account BPC's operations, particularly its rail connection.	As explained in its note relating to train movements submitted at Deadline 4, BPC considers that the future operation of BPC's rail connection has not properly been taken into account. As explained below in relation to paras 2.1.4 and 2.1.8 and in BPC's comments submitted at Deadline 3 on the Applicant's response to ExQ1 Cl.1.3, BPC considers the Applicant has also not taken into account other matters relating to the security and operation of the port and necessary controls over works within and affecting it.
	2.1.4 the effect of construction on the operation of the Port and the other port-dependent businesses on the Royal Portbury Dock estate (RPD Estate);	2.1.4 The Applicant will through the application of the provisions of the CEMP and CTMP (both required under Requirement 5 of the draft dDCO (Ref: AS - 014) seek to minimise impacts on all affected parties.	<p>The CEMP and the CTMP do not take into account the specific issues affecting works on and around the RPD estate and do not provide adequate controls for BPC as a statutory undertaker responsible for RPD. The Port estate is a dynamic and potentially dangerous environment and the activities undertaken there are outside the experience of most contractors.</p> <p>BPC needs to manage and co-ordinate all activities that take place on or affect the RPD estate to ensure the continued efficient movement of operational plant and equipment, security, the protection of cargo from damage and the safety of all persons within the estate. For this purpose, BPC requires appropriate controls over the programming of works around the estate and compliance by all contractors with a protocol designed to ensure the</p>

			<p>continuity of efficient working of the Port, the protection of the environment and the safety of all persons. The protocol will include measures relating to safety inductions, security measures to be taken by personnel and compliance with BPC's Permit to Work system (which is designed to avoid hazards arising from conflicting activities on the estate).</p> <p>BPC accordingly requires a protective provision as set out in para 6.3.2 of its written representation.</p>
	2.1.5 the loss of land safeguarded for port development;	2.1.5 The Applicant believes the land referred to as being safeguarded is the land formerly contained within Plot 05/85 and required for Work No. 16D. Work No. 16D was provided specifically for the benefit of BPC and, following discussion with BPC and other parties, the Applicant has sought the removal of this land from the Order land.	BPC notes that the Applicant has sought the removal of Work 16D and that the ExA has agreed to this change. However, the safeguarded land under current planning policy also includes the land proposed to be affected by Work 16B. If Work 16B were to remain part of the authorised development, land safeguarded for port development would still be lost as a result of the DCO scheme.
	2.1.6 the Applicant's failure to demonstrate any compelling case in the public interest for the compulsory acquisition of rights over BPC's land;	The Applicant believes there is a specifically compelling case for all rights sought over BPC's land. The new rights sought are to allow Network Rail to access its railway with road/rail vehicles to allow for a more robust and reliable service because of the improved access for maintenance the access over plots 05/104,108,108,112 165 and 171, together with 06/25 and 06/55 will provide. In addition the new rights over 05/75 will provide maintenance access to the Cattle creep bridge under the railway next to the	The Applicant should justify in each case the terms of each right sought in Schedule 10 of the draft DCO. Rights sought over BPC's land (including its private rail link) must be subject to appropriate controls as set out in paras 4.6 to 4.10 of BPC's written representation.

		M5 whilst access to the culvert at plot 03/78 is required to ensure the watercourse if capable of being maintained by Network Rail. A compelling case for each new right sought therefore exists.	
	2.1.7 the serious detriment which BPC, as a statutory undertaker, would suffer if compulsory acquisition were to be authorised;	2.1.7 The Applicant does not believe that the provisions of the Order give rise to any serious detriment that would be the subject of s127 of the 2008 Act. Protective Provisions have been offered to BPC.	The Protective Provisions offered by the Applicant are too narrowly framed to provide the protections needed by BPC if serious detriment to BPC's statutory undertaking is to be avoided.
	2.1.8 port security issues caused by the Applicant's activities on or adjacent to BPC's land; and	2.1.8 The Applicant is content to work with BPC in relation to its purported security issues. The Applicant notes however that, with the exception of works as may be required to use BPC's level crossing as a road rail access point, no activities within BPC's fence are proposed by the Applicant. Whilst a gate across a public bridleway at Marsh Lane would need to be accessed by the Applicant, this land is already publicly accessible.	<p>The security of cargo in transit storage at the Port is of major concern to BPC, and its infrastructure is specifically designed to protect and enhance that security. Imported vehicles stored in car compounds are a very valuable cargo and an attractive target for thieves and/or vandals. BPC therefore surrounds its car compounds with secure fencing, and so far as possible sets the boundaries of those compounds away from the boundaries of the dock estate where there would otherwise be any risk of penetration of the fence by, for example, ram raiding or plant/machinery which was able to get close to the compound fences. For the same reason, BPC carefully controls vehicular access to areas close to the compounds, such as the perimeter track leading from Marsh Lane.</p> <p>Vegetation around the exterior of the compound fences provides an additional barrier and security measure and also acts to filter dust and other emissions arising from activities outside the fence so as to protect the vehicles in the compounds from damage.</p>

			<p>The effectiveness of the vegetation in this security and screening role and the benefit it provides can be seen from the photograph in appendix 1 which shows the vegetation between the publicly accessible track and the secure fence of an adjacent vehicle compound.</p> <p>It is therefore not correct to characterise the areas of the RPD estate where the Applicant seeks to undertake its works and exercise powers as being on the "<i>margins of BPC's estate</i>" (see the Applicant's comments at BPC-D2-002 para 2.1 above BPC-D2-004 para 4 below) or of no importance to BPC simply because they are not within a vehicle storage compound. These areas form part of, and are used for important purposes in connection with, BPC's statutory undertaking.</p> <p>While public access for pedestrians, horses and cyclists currently exists over the perimeter track leading from Marsh Lane, the risk this access presents to the security of the car compounds and other parts of RPD is of a very different magnitude to that which would be presented if use of the track were to be permitted as proposed by the Applicant for frequent use on a daily basis by HGV construction traffic, particularly if the Applicant's use of and works to the track extended right up the compound fences (which is what the powers currently sought by the Applicant would authorise).</p> <p>BPC's concerns as to the port security issues caused by the Applicant's activities on or adjacent to BPC's land are therefore very real and are one of the reasons BPC:</p> <ul style="list-style-type: none"> • objects to the uncontrolled powers sought by the Applicant in the draft DCO in relation to use of the track and BPC's land around it immediately adjacent
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			<p>to the compound fences, and to the powers sought in relation to the removal of vegetation; and</p> <ul style="list-style-type: none"> • seeks protective provisions of the nature set out in its written representation (in particular in paras 6.3.1 to 6.3.10, 6.5, 6.6, 6.9.5 to 6.9.7 and 6.11.1).
	2.1.9 ecological effects.	2.1.9 The Applicant's Environmental Statement fully considers all relevant ecological effects. The Applicant has sought to work with BPC's ecological experts to minimise cumulative impacts.	<p>BPC refers to its comments submitted at Deadline 3 on the Applicant's responses to ExQ1 BIO.1.37 and the need to ensure the Applicant's works are carried out in accordance with BPC's Ecological Management Plan.</p> <p>At Issue Specific Hearing 3 on 12 January a representative of the Applicant referred to plans for the proposed retention of vegetation and supplemental vegetation/woodland planting in the vicinity of Royal Portbury Docks, to provide screening to mitigate potential impacts on the North Somerset and Mendips Bat SAC. The Applicant should please signpost where details of this retention/planting may be found and how it is secured in terms of Requirement 24 or otherwise.</p>
BPC-D2-003	3. PORT OPERATIONS AND SECURITY [paras 3.1-3.5 omitted for brevity]	The Applicant has no comments on these paragraphs.	
BPC-D2-004	4. SERIOUS DETRIMENT	<p>The Applicant has carefully prepared its application so as to minimise impacts on the Port and almost all of the land sought from the Port is at the margins of BPC's estate.</p> <p>Dealing with BPC's specific comments:</p>	As explained above at BPC-D2-002 in relation to para 2.1.8, it is not correct to characterise the areas of the RPD estate where the Applicant seeks to undertake its works and exercise powers as being on the " <i>margins of BPC's estate</i> " and of no importance to carrying on BPC's statutory undertaking.
	4.1 BPC's land has been acquired by BPC as a statutory undertaker for the purposes	4.1 The Applicant accepts that BPC holds land for the purposes of its statutory	BPC refers to the note prepared by Wedlake Bell LLP in relation to BPC's powers as statutory undertaker,

	<p>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</p>	<p>undertaking. It is not however clear if all of the land is held for the purposes of the Port's undertaking.</p>	<p>submitted at Deadline 4. As explained in that note, all BPC's land within the Order limits is land used by BPC for the purpose of carrying on its statutory undertaking or land in which an interest is held for that purpose.</p>
	<p>4.2 BPC's land is therefore land to which section 127(1) of the Planning Act 2008 applies. 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.</p>	<p>4.2 The Applicant accepts that s127(1) is in principle engaged.</p>	
	<p>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.</p>	<p>4.3 The Applicant believes the only land scheduled for permanent freehold acquisition from BPC comprise:</p> <ul style="list-style-type: none"> (a) a small culvert head (Plot 04/53); (b) some scrub land on which it is proposed to provide a replacement permissive cycle path, immediately to the east of the bridge carrying Marsh Lane over the disused railway [Plot 05/27]; (c) land to provide a new public bridleway to extend from beneath the M5 Avonmouth Bridge to the route carrying National Cycle Network Route 26 from the Avonmouth Bridge to Pill (Plots 05/101, 102,130,131,135,136 and 137). <p>The Applicant believes that none of these plots, if lost to BPC, would lead to serious</p>	<p>Freehold acquisition is also proposed in relation to Plots 04/85 and 05/50.</p> <p>BPC explains above (at BPC-D2-002 para 2.1.8) why it is not appropriate to refer to its land on the dock estate outside the boundary fences of vehicle storage compounds (such as the land comprised in Plot 05/27) merely as "scrub land". However, as set out below at BPC-D2-007 in relation to paras 5.10 and 5.11, compulsory acquisition of this area and Plots 05/101, 102, 130, 131, 135 and 136 is not necessary, given the availability of alternative solutions.</p> <p>However, the compulsory powers sought by the Applicant are not limited to those affecting Plots which are proposed for outright purchase. The required assessment of the effect on BPC's land and the carrying on of its statutory undertaking must take into account the effect of all compulsory powers sought over BPC's land</p>

		detriment to BPC's undertaking.	and any other land in which it holds an interest.
	<p>4.4 So far as they affect BPC's land, the compulsory acquisition powers sought by the Applicant include those of outright purchase, 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. 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, BPC considers this condition cannot be met.</p>	<p>4.4 As indicated above, the nature of the land to be acquired permanently and the limited impact on BPC's undertaking mean that no serious detriment would arise.</p>	
	<p>4.5 BPC has found it difficult to establish the purposes for which rights over its land are being sought. This includes the right of way sought over plot 05/75 and the extensive rights sought in relation to the busy track which leads from Marsh Lane around the perimeter of the Port towards the M5. Rights sought to run trains over BPC's private rail link are expressed in Schedule 10 to the draft DCO in terms that do not limit the nature of the trains or allow for any constraints whatsoever on the</p>	<p>4.5 Plot 05/75 is subject to new rights to allow for access to the nearby Cattle Creep Underbridge, which will need to be maintained by Network Rail following the operation of the railway commencing. Plot 05/75 was also included to allow for access for the construction of Work Nos. 16C and 16D.</p>	<p>BPC is grateful for the clarification in relation to Plot 05/75, but this limited purpose should therefore be reflected in the draft DCO in place of the wider and less well-defined right currently sought in terms of Schedule 10, which Schedule should be amended to reflect the removal from the draft Order of Work 16D and, if it be the case, Work 16B.</p> <p>BPC's concerns remain in relation to the rights sought over the track which leads from Marsh Lane and over its private rail link, where similar clarifications have not yet been made available.</p>

	frequency and timings of use.		
	4.6 BPC cannot operate its statutory undertaking unless it can adequately control the use of parts of it by a third party.	4.6 Whilst the Applicant does not accept that any of its proposals would impact on BPC as suggested, the Applicant is willing to, and continues to work with BPC to provide the necessary assurance sought by BPC.	BPC looks forward to further engagement with the Applicant.
	4.7 BPC has not been able fully to understand the purposes for which powers of temporary possession of its land are being sought. In some cases, the extent of the areas over which possession is sought seem excessive.	4.7 The Applicant will endeavour to explore BPC's concerns and provide clarification where necessary. This can be provided to the ExA and Secretary of State if clarification is also sought by the ExA/Secretary of State.	
BPC-D2-005	Statutory undertaker's land Temporary and permanent rights Temporary possession		
	4.8 BPC needs certainty as to what its land is needed for and for how long and to be sure that its operational land will be returned in the same state as when possession was taken.	4.8 The Applicant is content to work with BPC to provide assurances and clarifications needed.	
	4.9 The extent of compulsory land acquisition powers sought over land which is part of or adjacent to Marsh Lane and Royal Portbury Dock Road is excessive.	4.9 The Applicant does not accept that the extent of compulsory land acquisition powers sought is excessive. There will be no interruption to the use of the highway at Marsh Lane or Royal Portbury Dock Road, both of which are public highways. The Applicant seeks to acquire the approaches	It is not correct that the land set out in the Book of Reference which the Applicant seeks to acquire from BPC in connection with Marsh Lane or Royal Portbury Dock Road was only recently acquired by BPC from Bristol City Council (BCC). The long (150 year) leasehold of Plots 04/85 was acquired by BPC from BCC as part of the RPD undertaking in 1991. In 2015, BPC

		to the bridges carrying both highways across the railway to ensure that it is able to maintain the bridges post the railway coming back into operation. The Applicant does not believe it is necessary for the land to remain in BPC's ownership (and BPC functioned for many years without the freehold of these lands, with the land having been transferred by Bristol City Council in the relatively recent past).	acquired the freehold reversion to the area from BCC but has been using it as part BPC's undertaking since 1991. Plot 05/50 was acquired by BPC from a third party. BPC is also concerned about the proposals for compulsory acquisition of other land at Royal Portbury Dock Road and Marsh Lane not owned by BPC but over which BPC requires continued access in connection with its adjacent land: BPC requires that its access rights in respect of these Plots are preserved as set out in para 7.3.7 of its written representation.
	4.10 BPC specifically objects to the proposed acquisition of plot 05/50 since part of this land is required to provide access for the electronic communication operator to its adjacent mast.	4.10 The Applicant is willing to remove part of Plot 05/50 from the Order land for freehold acquisition. It may be necessary for the Applicant to secure rights of access over the part for which freehold acquisition is not required, for access to maintain the part of plot 05/50 that is required or the purposes of the DCO Scheme. The Applicant will discuss further with BPC this potential amendment to the Land Plans and Book of Reference	BPC is pleased to note the Applicant's willingness to remove part of Plot 05/50 from its proposals for compulsory acquisition and looks forward to engaging with the Applicant to see if agreement can be reached on the extent of the land to be removed and any access right sought.
BPC-D2-006	<p>Permanent deprivation</p> <p>5. OTHER SPECIFIC CONCERNS</p> <p>5.1 The DCO includes compulsory acquisition powers in respect of an area of land in connection with Work Nos. 16B and 16D. This land is specifically safeguarded for port development within NSC's adopted planning policy. No provision is made for alternative land to be made available for</p>	5.1 The Applicant has sought to remove Work No. 16D from the consented works. Work No. 16B is on land allocated in the local plan for ecological purposes. The relevant policies are CS4 - Nature Conservation and CS9 - Green Infrastructure of North Somerset Council's Core Strategy (Jan 2017) together with policy DM8 - Nature Conservation in the Development Management Policies, Sites	See comments above at BPC-D2-002 para 2.1.5. The land affected by Work 16B is allocated by Development Management Policies, Sites and Policies Plan Part 1 policy DM49 as a site safeguarded for port development. The policy provides that development of the whole area affected by the policy would be permitted subject to satisfactory environmental safeguards, including mitigation/compensation where appropriate. Policy DM8 refers to the site of Work 16B as being a locally designated Wildlife Site, where planning permission for

	development at the Port, so BPC objects to all of this safeguarded land (plot 05/85) being taken and used.	and Policies Plan Part 1, Adopted July 2016 Work No 16B land is allocated as a Wildlife Site under policy DM8. The land in question is not owned by BPC.	development would need to include appropriate measures to mitigate any loss or other significant adverse effect.
	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.	5.2 The permanent right of access is sought to enable Network Rail to better maintain its railway, both for the benefit of passenger services but also for BPC.	Rights sought over BPC's land (including its private rail link) must be subject to appropriate controls as set out in paras 4.6 to 4.10 of BPC's written representation. The right sought in Schedule 1 of the draft DCO over Plot 05/75 should in any case be amended as set out at BPC-D2-004 para 4.5 above.
	5.3 The proposals to create: 5.3.1 a permanent road-rail access point where the Port perimeter track meets BPC's privately-owned railway within the RPD Estate; 5.3.2 permanent rights over the track and other land to bring road and rail vehicles to the access point; and 5.3.3 further permanent rights for Network Rail's works trains to pass over BPC's private railway	5.3 As stated above the road rail access point would benefit BPC as well as Network Rail more generally. Whilst the level crossing itself is gated, there are additional gates that would protect BPC's state should Network Rail be using the level crossing as a RRAP. The Applicant believes the use of BPC's railway for maintenance vehicles by Network Rail is required, appropriate and sensible. It would be regulated by the usual signalling liaison between BPC and Network Rail.	These aspects of the Applicant's proposals require engagement from Network Rail to explain the extent of the rights sought since to date the Applicant has been unable to confirm the position with sufficient certainty to enable BPC to understand and assess the effect of the proposals and determine whether, and how, BPC's concerns may be resolved.
	5.4 The proposed use of the perimeter track conflicts with other regular vehicular use of the track by BPC and others and is a significant concern for the security of the RPD Estate.	5.4 The perimeter track is a public bridleway. Whilst it is gated by BPC, there is existing public access. The Applicant would work with BPC to ensure that BPC's reasonable security requirements are met. The Applicant can confirm that it in no way intends to rely on the Order powers to extinguish the rights of other parties to use	BPC refers to its comments at BPC-D2-002 para 2.1.8 above, at BPC-D2-007 below and its comments submitted at Deadline 3 on the Applicant's response to ExQ1 Cl.1.3. The Applicant's commitment not to extinguish the rights of other parties to use the perimeter track should be enshrined in the DCO.

		the perimeter track.	
	5.5 The draft DCO would permit closure of BPC's private crossing that connects operational land to the north and south of the disused railway. This will constitute an unacceptable interference with BPC's operations and statutory undertaking.	5.5 The private crossing at Court House Farm is specifically excluded from the operation of the Order to extinguish third party rights. This issue is dealt with above in terms of the planning permission applying to the Court House Farm crossing.	BPC refers to its comments submitted at Deadline 3 on the Applicant's response to ExQ1 CA.1.10.
	5.6 The draft DCO does not adequately protect BPC's rail paths or prevent interference with rail access for freight traffic to and from the Port during construction.	5.6 The Order could not be used to protect BPC's rail paths. BPC's rail paths have been fully considered in the application submission.	BPC refers to its note relating to train movements paths submitted at Deadline 4. BPC does not seek an allocation of train paths, but to ensure that both now and in the future, the number of freight train movements currently permitted by planning condition and protected under an existing agreement between BPC and Network Rail cannot be reduced, restricted or otherwise interfered with as a consequence of passenger train timetabling on the Applicant's proposed railway. This can be achieved in the proposed DCO and in its note submitted for Deadline 4 BPC sets out the form of additional protective provision required.
	5.7 The proposed location of a construction compound on BPC land beneath the M5 overbridge will interfere with the need for access and impair the security integrity of the RPD Estate.	5.7 The Applicant does not believe this publicly accessible land being used for a compound would have any impact on the security and integrity of the area.	See BPC's comments about security within the dock estate at BPC-D2-002 para 2.1.8 above.
		The Applicant will review the proposed Protective Provisions but has already included its own proposals for Protective Provisions in the draft Order which it	

		believes are sufficient to deal with any question of serious detriment	
BPC-D2-007	<p>Loss of safeguarded and operational land</p> <p>Marsh Lane perimeter track</p> <p>will adversely interfere with BPC's use of the track and its private rail link.</p> <p>Rail crossing</p> <p>Rail access - 4 - 047664.0051/21621487/1</p>	<p>The Applicant and NR is currently discussing with BPC a draft Heads of Terms issued by BPC. The Applicant will provide a more detailed response of the position including an update on the draft SoCG by deadline 4 (19th January).</p>	<p>BPC remains particularly concerned about the proposals for HGV use of its perimeter track leading from Marsh Lane during construction and then for permanent use of the track for RRVs. In relation to use during construction, BPC explained these concerns in its comments at deadline 3 on the Applicant's responses to ExQ1 Cl.1.3. The Applicant has subsequently commented (at Issue Specific Hearing 2 on 11 January) that it does not consider that the track need be surfaced by it before proposed HGV use begins. BPC considers that surfacing would be essential, both to prevent damage to the track and to the vehicles of others and to prevent excess dust being generated which would damage the motor vehicles in transit storage in the adjacent compounds.</p> <p>The photograph in appendix 2 shows the current extent and condition of a small section of the track, and illustrates why, while the track is adequate for the current level of traffic BPC permits to use it, BPC reasonably considers that if greater use of the track is to be permitted in connection with the DCO scheme - whether by HGVs during construction or increased RRV traffic in the future - an adequate surface of sufficient width must first be laid.</p>
	<p>5.8 Network Rail has not participated in any meaningful discussions with BPC about the construction and operation of the new branch line, so BPC cannot assess the effects of various arrangements</p>		<p>BPC still awaits meaningful engagement from Network Rail about the construction and operation of the new branch line, its effects on the Port and the content of and proposed arrangements for works proposed to be carried out to BPC's rail link. BPC's concerns about those</p>

	<p>proposed for Network Rail's benefit.</p> <p>5.9 BPC requires: 5.9.1 controls over all works affecting its rail link; and</p> <p>5.9.2 legally binding commitments from Network Rail as to availability of future train paths for trains departing from and arriving at RPD.</p>		<p>aspects of the draft DCO therefore remain unanswered.</p> <p>See BPC's comments at BPC-D2-007 para 5.6 above in relation to BPC's need to preserve its current rail access.</p>
	<p>5.10 BPC does not accept that a need for the works proposed affecting public bridleways/cycleways in and around the RPD Estate has been demonstrated or that the works proposed constitute associated development.</p> <p>5.11 It is inappropriate that BPC should be deprived of land to provide public rights of way in substitution for routes which are currently only permissive and for which there is already an alternative</p>		<p>BPC cannot accept that any of its land should be the subject of compulsory purchase for the purpose of providing new public paths which BPC maintains are not necessary, given existing available alternatives. All BPC's land at RPD is used or held for the purpose of its statutory undertaking.</p> <p>However, in principle BPC would be prepared to agree to the execution on its land of Works Nos. 15, 16 and 18, on condition that:</p> <p>(a) in each case, the works are constructed in the positions and in accordance with the details shown on the relevant drawings currently specified in Requirement 4 of the draft DCO or (as applicable) the drawing relating to Work No. 18 previously specified in that Requirement which is to become the Bridleway Extension under the Elevated M5 Plan;</p> <p>(b) the path created by Work No. 16 is a permissive route only;</p> <p>(c) the path created by Work. No. 18 is created as a public bridleway by dedication by BPC; and</p> <p>(d) North Somerset Council, as local highway authority, is responsible for the maintenance of the paths created,</p>

			including associated landscaping.
BPC-D2-008	<p>Network Rail</p> <p>PROWs</p> <p>6. PROTECTIVE PROVISIONS IN DCO</p> <p><i>[paras 6.1 to 6.11 omitted for brevity]</i></p>	<p>The Applicant and NR is currently discussing with BPC a draft Heads of Terms issued by BPC.</p> <p>The Applicant believes the proposed Protective Provisions put forward by BPC are unnecessary and excessive and go well beyond what is reasonable. In particular the Applicant sees no reason to include any provision dealing with the Court House Farm level crossing which is already fully regulated by agreement between BPC and Network Rail and by planning permission.</p> <p>The Applicant will provide a more detailed response of the position including an update on the draft SoCG by deadline 4 (19th January).</p>	<p>BPC considers that the Protective Provisions suggested by it are necessary to protect its statutory undertaking and proportionate.</p> <p>BPC looks forward to engagement with the Applicant in relation to the content of the Protective Provisions, but notes that, if BPC's concerns are to be addressed, proper engagement will also be needed with Network Rail in relation to relevant aspects of the draft DCO and the authorised development.</p>
BPC-D2-009	<p>7. LAND PLANS AND BOOK OF REFERENCE</p> <p><i>[paras 7.1 to 7.3 omitted for brevity]</i></p>	<p>The Applicant is reviewing the comments made by BPC.</p>	<p>BPC awaits the Applicant's further comments.</p>
BPC (other documents)	<p>Multiple documents submitted:</p> <p>Cover letter</p> <p>Response to ExQ1</p> <p>Annex to ExQ1</p> <p>Deadline 2 written repr</p> <p>Letter to ExA re BPC attendance at CAH</p>	<p>The Applicant is reviewing the comments made by BPC</p>	<p>BPC awaits the Applicant's further comments</p>

	<p>on 4 December</p> <p><i>[links omitted for brevity]</i></p>		
BPC3-D2-001	<p>Note on behalf of First Corporate Shipping Limited trading as The Bristol Port Company for the Compulsory Acquisition Hearing 4 December 2020</p> <p>Introduction</p> <p><i>[paras 1 and 2 omitted for brevity]</i></p>	<p>The Applicant has no additional comments</p>	
BPC3-D2-002	<p>Work 16D</p> <p>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.</p> <p>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</p>	<p>The Applicant requires a new right over the land comprising Plot 05/85 to connect the proposed plot 05/75 with plot 05/86 (the southern side of the Cattle Creep bridge).</p> <p>The Applicant notes that BPC does not hold any interest in plot 05/85. However it is necessary for the Applicant to secure new rights over 05/75 and 05/85 that provide a continuous route from Marsh Lane to the Cattle Creep Bridge.</p>	<p>BPC will continue its dialogue with the Applicant to determine the precise nature and extent of the rights still to be sought, but BPC anticipates engagement may also be needed with Network Rail if any acceptable resolution of the issue relating to the access sought over Plot 05/75 is to be reached.</p>

	<p>acquisition of a permanent right of access over the released part of the parcel to access the remainder of the parcel.</p> <p>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.</p>		
BPC3-D2-003	<p>Other matters</p> <p>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.</p>	The Applicant is reviewing the terms proposed.	BPC awaits the Applicant's further comments.
BPC3-D2-004	<p>7. The details provided to the Applicant reflect the issues raised by BPC in its written representations submitted at</p>	The Applicant is reviewing the terms proposed. The Applicant does not believe the proposed protective provisions	BPC awaits the Applicant's further comments and those of Network Rail.

	<p>Deadline 2 and the previous and continuing constructive dialogue between BPC and the Applicant.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>suggested by BPC are reasonable.</p>	
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<p>BPC3-D2-005</p>	<p>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.</p>	<p>The Applicant does not believe this is an issue for the examination. It is regulated by agreement and by planning permission.</p>	<p>BPC refers to its comments submitted at Deadline 3 on the Applicant's response to ExQ1 CA.1.10.</p>
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Appendix 1

BPC-D2-002 para 2.1.8: screening of vehicle compounds along Marsh Lane perimeter track



Appendix 2

BPC-D2-007: condition of Marsh Lane perimeter track

