



# MetroWest+

## Portishead Branch Line (MetroWest Phase 1)

TR040011

**Applicant: North Somerset District Council**

**3.2 Explanatory Memorandum**

**Infrastructure Planning (Applications: Prescribed Forms and Procedure)**

**Regulations 2009, regulation 5(2)(c)**

**Planning Act 2008**

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## **Purpose of Document**

This document explains the purpose and effect of each provision in the draft DCO.

# The Portishead Branch Line (MetroWest Phase 1) Order 202X

## Explanatory Memorandum

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## THE PLANNING ACT 2008

### THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND PROCEDURE) REGULATIONS 2009 REGULATION 5(2)(c)

#### The Portishead Branch Line (MetroWest Phase 1) Order

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### EXPLANATORY MEMORANDUM

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## 1. INTRODUCTION

1.1 This memorandum accompanies an application for development consent (the **Application**) by North Somerset District Council (referred to in this document as the **Applicant**) to:

1.1.1 construct a new railway between Portishead and Pill; and

1.1.2 carry out other development required within the Order limits

(the **DCO Scheme**) as is described in the draft Portishead Branch Line (MetroWest Phase 1) Order (the **draft Order**) (DCO Application Document Reference 3.1).

1.2 This memorandum explains the purpose and effect of each article of, and Schedule to, the draft Order, as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (**APFP**).

1.3 This memorandum also highlights and explains the purpose and effect of any departures from relevant Orders for similar development and, where appropriate, also draws on draft Orders made under the Planning Act 2008 (2008 c. 29) (the **2008 Act**), Orders made under the Transport and Works Act 1992 (1992 c. 42) (the **1992 Act**) and other Acts authorising development.

#### *The Portishead Branch Line Railway*

1.4 The Portishead Branch Line Railway was constructed in the 1860s and ran between Parson Street Junction in Bristol and the town of Portishead. It closed to passenger trains in 1964 and freight operations ceased in the 1980s. In this memorandum **Portishead Branch Line Railway** refers to the whole of the railway between Parson Street Junction and Portishead.

1.5 In 2001 part of the Portishead Branch Line Railway was restored to freight use between Parson Street Junction and Portbury Junction, to the west of the village of Pill, to

connect to a new railway built by the Bristol Port Company to serve its Royal Portbury Dock. This railway is described as the **Existing Freight Line** in this memorandum.

- 1.6 Part of the railway between Portbury Junction and Portishead was transferred to the Applicant and has ceased to be operational railway. The remainder which was retained by Network Rail remains authorised by its original authorising Acts (the Portishead Pier and Railway Acts of 1863 and 1866 ( 26 & 27 Vict. C. cvii and 29 & 30 Vict. C. lxxxviii)) but has not been used for railway services for some years and some of the track has been removed. Both parts are together referred to in this memorandum and in other documents forming the DCO submission as “**the Disused Railway**”.
- 1.7 Development consent is sought to construct a new railway, utilising the trackbed of the disused Railway. This part of the DCO Scheme is a Nationally Significant Infrastructure Project (**NSIP**) for the reasons set out in Part 4 of this Memorandum. Consent is also sought in the draft Order for associated development required for the new passenger railway service.

### ***MetroWest***

- 1.8 The DCO Scheme is a key part of the MetroWest Phase 1 package of local rail improvements proposed by the West of England Authorities for the West of England Sub Region. The West of England Authorities comprise the Applicant, Bristol City Council, South Gloucestershire Council and Bath & North East Somerset Council. The West of England Combined Authority (**WECA**) is supporting the DCO Scheme, and now coordinates the input of its constituent members, having been formed by Bristol City Council, South Gloucestershire Council and Bath & North East Somerset Council since the inception of the MetroWest project.
- 1.9 As well as the DCO Scheme, MetroWest Phase 1 includes minor works proposed to be carried out on Network Rail Infrastructure Limited's (**Network Rail**) operational network utilising permitted development rights. These additional works are located on the Bristol–Taunton main line at Bedminster, the Severn Beach branch line and at Bathampton on the Bath-Swindon main line.
- 1.10 A further project is being promoted by the West of England Authorities for rail improvements north of Bristol which is known as MetroWest Phase 2. The draft Order does not seek powers for those parts of the MetroWest schemes referred to in this paragraph.

### ***The DCO Scheme***

- 1.11 The DCO Scheme is explained in detail in section 11 of this memorandum. In brief summary the DCO Scheme comprises:

#### ***The NSIP***

- 1.11.1 A new railway from Quays Avenue in Portishead to Portbury Junction in Pill on the track bed of the Disused Railway (Work Nos. 1 and 1A);
- 1.11.2 A new railway from Portbury Junction through the village of Pill to a new junction west of Pill Tunnel, on the Existing Freight Line (Work No, 1B); and

- 1.11.3 A new railway from Portbury Junction, parallel to Work No. 1B, through the village of Pill to a new junction west of Pill Tunnel, on the Existing Freight Line, to connect to Royal Portbury Dock (Work No, 1C).

*Associated Development*

- 1.11.4 New stations at Portishead and Pill together, with new car parks and work to the highway network (including the diversion west of Quays Avenue Portishead), urban realm and public right of way improvements;
- 1.11.5 A new cycle and pedestrian bridge to the south of Trinity Anglican Methodist Primary School (**Trinity Primary School**), Portishead and associated new cycle tracks;
- 1.11.6 Permanent maintenance compounds at Sheepway, Severn Road, Pill, Ham Green (all in North Somerset) and Clanage Road in Bristol;
- 1.11.7 Works to the bridleway network in the vicinity of Royal Portbury Dock and an extension of the bridleway under the M5 Avonmouth Bridge east to provide a continuous public right of way to Pill;
- 1.11.8 Revised bus stop at Pill Memorial Club, Pill;
- 1.11.9 Works to the Winterstoke Road/Ashton Vale Road Junction in Bristol; and
- 1.11.10 Temporary compounds and haul roads.

*Nature of Proposed Order*

- 1.12 The draft Order seeks to apply and modify statutory provisions concerning the compulsory acquisition of land and the treatment of certain requirements as planning conditions. It is therefore drafted in accordance with sections 117(4) and 120(5) of the 2008 Act as a statutory instrument.
- 1.13 A detailed explanation of the DCO Scheme is set out in Chapter 4 of the Environmental Statement which accompanies the Application ( DCO Application Document Reference 6.7 – Chapter 4, Description of the Proposed Works).

**2. SUMMARY OF THIS DOCUMENT**

- 2.1 This memorandum explains the purpose and effect of each article of, and Schedule to, the draft Portishead Branch Line (MetroWest Phase 1) Order, as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 2.2 It also explains the roles of the parties involved in promoting the DCO scheme and how their other statutory functions and responsibilities are taken into account.
- 2.3 North Somerset District Council is the promoter of this application for development consent on behalf of itself and the West of England Combined Authority, which itself acts on behalf its three constituent West of England Authorities (Bristol City Council, Bath and North East Somerset Council and South Gloucestershire Council).

- 2.4 Details are also provided on how it is intended to demonstrate the detail of the DCO Scheme and how the plans submitted will be tied to the draft Order and its requirements.
- 2.5 Details of discussions with affected statutory undertakers are also provided.
- 2.6 This memorandum also highlights and explains the purpose and effect of any departures from relevant Orders for similar development and, where appropriate, also draws on draft Orders made under the Planning Act 2008, Orders made under the 1992 Act and other Acts authorising development.

### 3. CONTENT OF THIS EXPLANATORY MEMORANDUM

- 3.1 The following parts of this document explain:
  - 3.1.1 The Purposes of the Draft Order (Part 4);
  - 3.1.2 The location of the DCO Scheme (Part 5);
  - 3.1.3 The role of North Somerset District Council as Applicant (Part 6);
  - 3.1.4 The Role of the WECA and the other West of England Authorities (Part 7);
  - 3.1.5 Separation of functions (Part 8);
  - 3.1.6 the role of Network Rail Infrastructure Limited (Part 9);
  - 3.1.7 The Governance for Rail Investment Projects or "GRIP" process (Part 10);
  - 3.1.8 The Application boundary and the definition of the proposed works (Part 11);
  - 3.1.9 Plans (Part 12);
  - 3.1.10 Statutory Undertakers (Part 13)
  - 3.1.11 Summary of the works to which the draft order relates (part 14);
  - 3.1.12 Requirements, Code of Construction Practice (**COCP**) and Construction Environmental Management Plan (**CEMP**) (Part 15);
  - 3.1.13 Compulsory acquisition (Part 16); and
  - 3.1.14 the provisions of The draft Order (Part 17).
- 3.2 Appendix 1 summarises departures from Schedule 2 of The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (2009 SI No 2265) (referred to in this memorandum as the **Model Provisions**) and provides details of similar provisions in other Orders. The Model Provisions have been repealed but remain of relevance as a guide to drafting the provisions of a Development Consent Order. Made Orders referred to in preparing the draft Order include railway Development Consent Orders, other Development Consent Orders and recent railway orders made under the 1992 Act.

- 3.3 Appendix 2 is a document explaining the separation of functions applied by North Somerset District Council in carrying out its various functions as project promoter and as local planning, highway and flood authority.
- 3.4 Appendix 3 is a summary of the purposes of the protective provisions contained in Schedule 16 to the draft Order and discussions to date with the relevant statutory undertakers.

#### 4. THE PURPOSES OF THE DRAFT ORDER

- 4.1 In overview, the purpose of the draft Order is to grant the Applicant development consent for a Nationally Significant Infrastructure Project (NSIP) and its associated development, being a new railway between Portishead and Pill in North Somerset, that will become part of the national rail network following its construction. The NSIP will reconnect Portishead to the passenger railway network by reopening the Disused Railway and by reopening the Existing Freight Line to passenger rail traffic.
- 4.2 The DCO Scheme is a proposal for the construction of a railway under S14(1)(k) of the 2008 Act. Subject to the qualification criteria in section 25 of the 2008 Act (as amended) being fulfilled, the proposed development is an NSIP, consent under the Act is required (section 31 of the Act). Under section 37 of the 2008 Act, an order granting development consent may only be made if application for it is made (through the Planning Inspectorate) to the Secretary of State.
- 4.3 Section 25 of the 2008 Act sets out the conditions that must be satisfied for the construction of a railway to be classified as an NSIP under the 2008 Act. Construction of a railway will only be treated as an NSIP when each of the conditions set out in the section are satisfied.
- 4.4 The DCO Scheme satisfies the relevant qualification criteria of S25 of the 2008 Act. This is explained in Table 1 below:

**Table 1: the Qualification Criteria of S25 of the Planning Act 2008**

Section	Requirement of Section 25 of 2008 Act	Detail of works
S25(1)	The DCO Scheme consists of the construction of a railway.	A railway is to be constructed by the Applicant between Portishead and Pill (Works 1, 1A and 1B) on the track bed of the disused Portishead Branch Line.
S25(1) (a)	The DCO Scheme is wholly in England	The NSIP and all associated development included in the DCO Scheme is all wholly within England.
S25(1) (b)	The DCO Scheme will be part of a network operated by an approved	The railway will become part of Network Rail's national railway



Section	Requirement of Section 25 of 2008 Act	Detail of works
	operator.	network.
S25(1) (ba) (i)	The DCO Scheme includes a stretch of track that is a continuous length of at least 2 km.	Works 1, 1A and 1B collectively are over 2km in length and are continuous.
S25(1) (ba) (ii)	The DCO Scheme is not on land that was operational land of a railway undertaker immediately before the construction work began or is on land that was acquired at an earlier date for the purpose of constructing the railway.	<p>The land between Portishead and Old Portbury Station is not operational railway and is not held by a railway undertaker. The railway ceased operations in the 1980s and the last train traversed the branch line to Portishead in the 1980s.</p> <p>The trackbed between old Portbury Station and Portishead was not transferred to Railtrack PLC on railway privatisation and has ceased to be part of the national railway network. The freehold of the track bed between old Portbury Station and Portishead was acquired by the Applicant in 2008 for its strategic transport purposes, but not necessarily for the construction of a new heavy rail railway forming part of the national rail network. A heavy rail scheme was not the sole option for the use of the acquired land when the Applicant purchased the land.</p> <p>Network Rail is the freehold owner of the disused railway between Portbury Junction and old Portbury Station. This land was not acquired by Network Rail (or Railtrack PLC) for the purpose of constructing the railway.</p> <p>The proposal to construct the NSIP is a proposal of the Applicant and the constituent authorities of WECA and therefore this land is not held by</p>

Section	Requirement of Section 25 of 2008 Act	Detail of works
		Network Rail for the purpose of constructing the railway.
S25(1) (c)	The construction of the railway is not permitted development.	The Applicant does not hold permitted development rights to construct a railway as it is not a railway undertaker.

The DCO Scheme therefore is a NSIP for the purposes of the 2008 Act.

- 4.5 The draft Order also authorises development which does not form part of the NSIP but is associated with it and necessary for the effective operation of the NSIP.
- 4.6 In addition to dealing with the development, the draft Order also sets out powers of compulsory acquisition pursuant to section 120 of the 2008 Act and powers to interfere with both public and private rights of way where necessary. Powers to acquire open space and provide exchange land are sought.
- 4.7 Powers to maintain and operate the railway are also sought.

## 5. LOCATION OF THE DCO SCHEME

- 5.1 All of the works below lie wholly within England and are located on the southern side of the Severn Estuary and River Avon. The majority of the works lie within the administrative area of North Somerset District Council. The works south of Clifton Suspension Bridge (at Clanage Road, Winterstoke Road and South Liberty Lane) lie within Bristol City Council's administrative area.
- 5.2 The description of the DCO Scheme below commences in Portishead.
- 5.3 The part of the DCO Scheme comprising the NSIP for which development consent is sought is the construction of a new railway from Quays Avenue in Portishead to a location to the west of the western portal of Pill Tunnel, on the Existing Freight Line.
- 5.4 Associated development is located throughout the 5km route of the NSIP. The associated development in Portishead includes the new proposed Portishead station at Quays Avenue, Portishead. There will also be associated development at this location including diverting the highway of Quays Avenue, two car parks, landscaping, additions to the cycle track and public realm in Portishead and a new cycle track bridge to the south of Trinity Primary School.
- 5.5 Proceeding east from Portishead, temporary construction compounds and haul roads are proposed in the vicinity of the highway known as Sheepway, in Portbury, together with a small permanent compound to the north of the railway and the west side of the Sheepway overbridge. Construction compounds are also proposed off the A369 Portbury Hundred highway, underneath the M5 Avonmouth viaduct and at Lodway Farm, Pill.

- 5.6 Works to the public right of way network and associated permissive cycle path are also proposed at several locations between Royal Portbury Dock Road and the western side of Pill Village.
- 5.7 In Pill the existing overbridge carrying the Existing Freight Line over the public footpath between Lodway Close and Avon Road is proposed to be rebuilt for the new double track formation.
- 5.8 Along the Existing Freight Line between Portbury Dock Junction and Ashton Junction in Bristol various types of associated development are proposed. These include:
- 5.8.1 embankment and cutting and strengthening at Hardwick Road, Sambourne Lane, Mount Pleasant and Eirene Terrace in Pill;
  - 5.8.2 a new station at Pill, located at Station Road, together with a new car park and permanent maintenance compound at Severn Road, Pill;
  - 5.8.3 a new permanent maintenance and emergency compound (and temporary construction compound) at Ham Green, Pill;
  - 5.8.4 works to install fencing and other minor railway works between Pill and Ashton Junction;
  - 5.8.5 works to the Avon Gorge rock faces where the Existing Freight Line runs through the Avon Gorge Special Area of Conservation, and where potential for rock fall has been identified;
  - 5.8.6 a new permanent maintenance and emergency compound (and temporary construction compound) at Clanage Road, Bower Ashton;
  - 5.8.7 highway works at the Winterstoke Road junction with Ashton Vale Road; and
  - 5.8.8 a temporary compound to facilitate minor works to the existing railway network at Freightliner Limited's sidings at South Liberty Lane, Bristol.

## **6. THE ROLE OF NORTH SOMERSET DISTRICT COUNCIL AS APPLICANT**

- 6.1 North Somerset District Council is the applicant for development consent. It manages the MetroWest Phase 1 on behalf of the West of England authorities. A project team was established in 2013. Regular project team meetings take place which all four Unitary Authorities, at which WECA is also represented. Reports are produced for the Director's meetings and West of England Local Enterprise Partnership (LEP) Board and the Joint Committee of the West of England Authorities. Legal and Financial checks are made as part of this reporting process by all Section 151 and Monitoring Officers of the four Authorities and WECA.
- 6.2 The Council is the local highway authority and "host" local planning authority for the majority of the land shown in the land plan (DCO Application Document Reference 2.2). Bristol City Council is the "host" planning authority and local highway authority for the remainder of the Order land, approximately being the order land south of the Clifton Suspension Bridge.

- 6.3 North Somerset District Council is the obvious candidate for promoting this local authority-led railway development. The majority of the land to which the Order will apply lies within North Somerset and because the two new stations to be added to the network (Portishead and Pill) are both within North Somerset.
- 6.4 North Somerset District Council will transfer to Network Rail those powers contained in the Order sought to maintain and operate the railway and associated infrastructure.
- 6.5 North Somerset District Council will carry out the highway and ecological works for which development consent is sought as associated development and will maintain those parts of the consented development following construction.

## **7. THE ROLE OF THE WEST OF ENGLAND COMBINED AUTHORITY AND THE OTHER WEST OF ENGLAND AUTHORITIES**

- 7.1 Under the MetroWest Phase 1 project governance arrangements that were in place from 2013 to 30 November 2018, North Somerset District Council managed MetroWest Phase 1 on behalf of the four West of England local authorities (NSDC, Bristol City Council, Bath and North East Somerset Council, and South Gloucestershire Council).
- 7.2 Since the inception of the MetroWest projects the West of England Combined Authority has been established. North Somerset District Council is not a member of the WECA but works closely with WECA, which is made up of the other three West of England Authorities promoting the MetroWest projects.
- 7.3 Key decisions on the MetroWest project were taken by a joint committee of the West of England Authorities.
- 7.4 On 30 November 2018, the West of England Joint Committee decided to approve new MW1 project governance arrangements whereby WECA as a Joint Committee member representing its constituent local authority members Bristol City Council, Bath and North East Somerset Council, and South Gloucestershire Council) assumed a new primary role in the project governance of the MetroWest Phase 1, alongside the Applicant.

## **8. SEPARATION OF FUNCTIONS**

- 8.1 Appendix 2 to this Memorandum is the text of a document circulated to the relevant officers at North Somerset District Council to explain the separate roles of North Somerset District Council as Local Planning Authority, Highway Authority and its other statutory functions; and in its role as promotor of the DCO Scheme.
- 8.2 The Applicant will continue to be mindful of the separate functions involved in promoting and commenting on the provisions of the draft Order.

## **9. THE ROLE OF NETWORK RAIL INFRASTRUCTURE LIMITED**

- 9.1 Network Rail is working with North Somerset Council and the other West of England Authorities to promote the MetroWest projects including the DCO Scheme. In particular it is providing technical and engineering support to the application for this development consent and is, through the "GRIP" process (Governance for Rail Investment Projects) fully supporting the preparation of design work for MetroWest Phase 1.

- 9.2 The Applicant and Network Rail have entered into an agreement which sets out the general principles for the promotion of the MetroWest Phase 1 project and transfer of the rail elements of the authorised Development to Network Rail following construction.
- 9.3 In summary, North Somerset Council will apply for and obtain powers to construct the DCO Scheme, including powers for land assembly. The parties will then work together to construct the NSIP before the railway and its associated infrastructure (such as stations) is transferred to Network Rail as part of the National Rail Network.
- 9.4 Passenger services on the railway will then be operated by the relevant train operating company which will operate services over the NSIP and the Existing Freight Line, to restore passenger operations to the Portishead Branch Line. The train operating company will operate the two new stations. Network Rail will maintain and operate the track and infrastructure authorised by the draft Order in addition to that part of the Portishead Branch Line that is the Existing Freight Line, already being part of the National Rail Network.

## **10. THE "GRIP" PROCESS**

- 10.1 Network Rail has a set process for managing and controlling enhancements to the National Rail Network. This aims to regulate the interface between the investment and the complexities associated with working on or alongside the operating National Rail Network.
- 10.2 To minimise and mitigate the risks associated with delivering such projects, Network Rail has created the Governance for Rail Investment Projects process, known as "**GRIP**". The GRIP process is based on Network Rail's own best practice together with that of other industries undertaking major infrastructure projects. It covers the investment lifecycle from inception to post-implementation realisation of benefits.

### *The GRIP stages*

- 10.3 There are eight stages to the GRIP process:
- 10.3.1 Output definition;
  - 10.3.2 Feasibility;
  - 10.3.3 Option selection;
  - 10.3.4 Single option development;
  - 10.3.5 Detailed design;
  - 10.3.6 Construction, testing and commission;
  - 10.3.7 Scheme handback;
  - 10.3.8 Project close.
- 10.4 Each GRIP stage requires the delivery of an agreed set of products to specific quality criteria. The GRIP stage defines a product that should be produced at that stage and

within each GRIP document products are summarised in a matrix which lists what could be produced and at which stage in the investment lifecycle. Stage gate reviews are held throughout the process to identify risk and give assurance that the project should continue.

- 10.5 The plans and documentation submitted with the Application are largely drawn from the outputs at GRIP 3 stage, the most extensive stage that looks at options before settling on a single scheme.
- 10.6 Detailed design for GRIP 5 will commence in 2020. It is to be noted however that the detail provided in plans at GRIP 3 and 4 are, in planning terms, extremely detailed and the GRIP 5 "detailed design" refers to a level of detail beyond that which would be considered detailed design for planning application purposes.

## **11. THE APPLICATION BOUNDARY AND THE DEFINITION OF THE PROPOSED WORKS**

- 11.1 Powers in relation to the Order Lands shown in the land plan (DCO Application Document Reference 2.2) and works plans (DCO Application Document Reference 2.3) are sought for, in essence, four different purposes, in terms of the nature of the activities proposed. These are:
  - 11.1.1 The land required for the NSIP (comprising works 1, 1A, 1B and 1C);
  - 11.1.2 Associated development for the railway, such as the new stations at Portishead and Pill and new compounds, that will become part of the railway estate;
  - 11.1.3 Non railway works which are required as associated development to facilitate the railway, such as highway and public right of way diversions in Portishead and in the vicinity of Royal Portbury Dock; and
  - 11.1.4 Associated development comprising minor activities on the Existing Freight Line, such as fence construction in the Avon Gorge.
- 11.2 The works plans (DCO Application Document Reference 2.3) show the location of the NSIP and associated development. The horizontal limits for each work are shown. For the NSIP works themselves, the approach of a centre line and limits of deviation are taken to allow minor deviation from the submitted plans for the proposed works when constructed.
- 11.3 The detail for the NSIP works are shown on the disused railway engineering plans/GRIP 4 Minor Civils (DCO Application Document Reference 2.7). Additional detail is then provided in specific plans relating to the design of the relevant element of the authorised development.
- 11.4 Plans for the other non-railway works are shown on the new highway plans (DCO Application Document Reference 2.33) or on specific drawings relating to the specific element of the authorised development.
- 11.5 For railway related works between Ham Green in Pill and Ashton in Bristol, the only specific works shown on the works plans (DCO Application Document Reference 2.3) relate to significant construction activities outside of Network Rail's operational land

boundary (such as the re-building of the Quarry Bridge No. 2, and its associated compound.

- 11.6 In the Avon Gorge there will be a series of minor works along the Existing Freight Line that do not have allocated works numbers within the description of development. These comprise the fencing proposed within the Avon Gorge, small access steps from the River Avon Tow Path to the existing freight line, rock catch fencing and the Global System for Mobile Communications – Railway (**GSM-R**) equipment for in-cab communications that will be located within the Gorge. For these works the general location of the proposed works is indicated on the general arrangement plans (DCO Application Document Reference 2.4) but the final site detail will be agreed by the Applicant, Network Rail and the local planning authority following consultation with Natural England. The activities will be controlled by requirement in the draft Order and also the Avon Gorge Vegetation Management Plan, required to be adhered to by requirement 14 of the draft Order.
- 11.7 As the Existing Freight Line is already operational railway, the minor works to the Existing Freight Line outside of the Avon Gorge are not the subject of any Work in the Works description. Minor changes to the railway alignment as may be required are included in the general description of associated development at the end of the relevant part of Schedule 1 to the Order. The provision of additional fencing is controlled by requirement 25.
- 11.8 The Order land includes the railway through the Gorge principally to ensure that, should the railway cease to be in the ownership of Network Rail, the Applicant would have the ability to secure powers over the land to operate its railway and to ensure that any existing third party interests that might otherwise impede the operation of the passenger railway are capable of being converted into a right to compensation by the powers in the Order.

## **12. PLANS**

- 12.1 The plans referred to by the draft Order and submitted with the application to comply with Regulation 5(2) and Regulation 6 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) are as follows:
- 12.1.1 A Location Plan enabling the identification of the site (DCO Application Document Reference 2.1).
- 12.1.2 Land plan (pursuant to Regulation 5(2)(i)) (DCO Application Document Reference 2.2) showing the land affected by the development and the land subject to compulsory acquisition powers should necessary land and rights not be acquired through voluntary negotiation.
- 12.1.3 Works plans (pursuant to Regulation 5(2)(j)) (DCO Application Document Reference 2.3) identifying the areas for the different works that cross refer to Schedule 1 in the draft Order ( DCO Application Document Reference 3.1).
- 12.1.4 Access to Work Plans (pursuant to Regulation 5(2)(o)) (DCO Application Document Reference 2.29), which show access points for the development. These are cross referred to in Schedule 7 of the draft Order.

- 12.1.5 Plans showing all-purpose highways and public rights of way to be stopped up (pursuant to Regulation 5(2)(k)) (DCO Application Document Reference 2.30). These plans also show new highways to be created and are cross referred to in Schedules 4, 5 and 6 of the draft Order.
- 12.1.6 New Highway plans (pursuant to Regulation 5(2)(o)) (DCO Application Document Reference 2.35), which depict the general arrangement of proposed highway works to be carried out as associated development as part of the authorised development.
- 12.1.7 Regulation 6(2) Plans (pursuant to Regulation 5(2)(p)) (DCO Application Document Reference 2.9), which show the levels of the railway required by Regulation 6(2) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

### **13. STATUTORY UNDERTAKERS**

- 13.1 The Applicant is engaged with each of the statutory undertakers it has identified as owning apparatus within the Order land.
- 13.2 Discussions have progressed well and it is anticipated that either protective provisions attached to the Order will be finalised in good time before the end of the examination or separate agreements will be entered into with the relevant undertaker.
- 13.3 Draft protective provisions are provided in the draft Order. Some are specific for certain undertakers where such provisions have been provided to the Applicant by the undertaker. Others are generic. At the time of submission the provisions have not been finally settled and agreed and may be subject to further change prior to the end of the examination.
- 13.4 Appendix 3 of this document summarises the basis for inclusion of protective provisions in Schedule 16 of the draft Order and provides commentary on the status of agreement with the relevant statutory undertaker, where the Part of the Schedule is specific rather than in the form of Network Rail's standard generic protections for classes of utilities.
- 13.5 A detailed summary of the position regarding each of the relevant undertakers is set out in Appendix 6 of the Applicant's Statement of Reasons (DCO Application Document Reference 4.1).

### **14. SUMMARY OF THE WORKS TO WHICH THE DRAFT ORDER RELATES**

- 14.1 The DCO Scheme is divided into separate works that describe the different aspects of the DCO Scheme. The Work Nos. relate to areas on the works plans (DCO Application Document Reference 2.3) and are set out in Schedule 1 of the draft Order.
- 14.2 Document 2.3 – the works plans - contains a series of plans depicting the areas for separate works and includes a Key Plan. The Key Plan identifies the location of all the works on a single plan and also identifies the relevant specific works plans within the series of plans that applies to that work.
- 14.3 Where reference is made to the detail of works that are described in a Work No. being shown in a particular document, this reference is to the whole series of drawings within



that document. If reference is made to a specific drawing in the series, then the appropriate singular drawing is referred to.

- 14.4 The proposed Works to construct the NSIP comprise:
- 14.4.1 **Work No 1** – a permanent railway from Quays Avenue, Portishead to Station Road (Portbury),
  - 14.4.2 **Work No 1A** – a permanent railway from a point east of Station Road (Portbury) to Portbury Dock Junction, Pill,
  - 14.4.3 **Work No 1B** - a permanent railway from Portbury Dock Junction to a new junction with the existing operational railway to the west of the western portal of Pill Tunnel, and
  - 14.4.4 **Work No 1C** – realignment of the existing Parson Street Junction to Royal Portbury Dock Railway to facilitate the construction of Work 1B.

#### **Associated Development**

- 14.5 In addition to the NSIP referred to above, development consent is sought for associated development within the meaning of section 115(2) of the 2008 Act (development for which development consent may be granted) and within Order limits. This comprises:

**Work No. 2** – diversion of the highway of Quays Avenue, Portishead, from the junction of Quays Avenue and Galingale Way to a point west of the existing gyratory junction of Quays Avenue, Harbour Road and Phoenix Way, Portishead, together with connections to existing highways, widening of the southern footway of Harbour Road, landscaping, new bus waiting facilities, signage, lighting, pedestrian crossing facilities, pipes, drains, cables, ducts, troughs, telecommunications apparatus, conduits and apparatus for utilities as well as footways, and a connection to the pedestrian and cycle track forming part of Work No. 4;

**Work No. 2A** – surface water drain, north from Phoenix Way, Portishead into the watercourse known as the Cut;

**Work No. 3** – a foot and cycle track, , commencing at a junction with Work No. 4 east of the watercourse known as the Portbury Ditch, to a point west of Portbury Ditch, together with associated landscaping, signage, fencing, lighting, cables, ducts, troughs, telecommunication apparatus, conduits and apparatus for utilities;

**Work No. 4** – a car park, foot and cycle track and a new vehicular access to the highway of Harbour Road, south of Harbour Road, Portishead and east of the Portbury Ditch, together with landscaping, lighting, signage, fencing, drainage in to the adjacent Portbury Ditch, to the west of Quays Avenue, Portishead;

**Work No. 5** – railway station, south of Phoenix Way, Portishead, comprising platform, shelter, office, waiting area, storage and refuse area, seating, ticket vending machine, closed circuit television equipment, passenger help point, customer toilet, utilities connections, telecommunications equipment, public address system, information boards and displays, signage, lighting columns, fencing, acoustic barrier, landscaping, railway communications mast and surface water drain in to the adjacent watercourse known as the Cut;

**Work No. 6** – car park, to the south of Phoenix Way, Portishead, including mobility impaired spaces, drainage, lighting, fencing, landscaping, signage, cycle parking facilities and utilities apparatus, together with access from the highway of Phoenix Way;

**Work No. 7** – public foot and cycle track bridge over the Portishead Branch Line Railway, to the south west of Trinity Primary School, Portishead, together with connections to cycle tracks, lighting, signage, fencing and hardstandings;

**Work No. 7A** – public foot and cycle track, from Phoenix Way, Portishead to connect with Works Nos.7 and 7C, to the south of Tansy Lane and north of Work No. 1, together with signage, drainage, lighting, fencing and landscaping;

**Work No. 7B** – public foot and cycle track from Quays Avenue, Portishead, to connect with Work No. 7, to the north of Galingale Way and to the south of Work No. 1, together with signage, drainage, lighting, fencing and landscaping;

**Work No. 7C** - public foot and cycle track from Work No. 7 north to Tansy Lane, Portishead, together with signage, drainage, lighting, fencing and landscaping;

**Work No. 7D** – temporary construction compound, to the south of Tansy Lane, Portishead and to the north of Work No. 1;

**Work No. 7E** – underground electrical supply cables connecting from Work No. 7 to Tansy Lane, Portishead;

**Work No. 8** – temporary construction haul road on south side of, and parallel to, the Portishead Branch Line Railway, between a point south of Fennel Road, Portishead, and the highway known as Sheepway, Portbury;

**Work No. 9** – permanent vehicular compound road/rail vehicle access point and access road from the highway of Sheepway, to the north of the bridge carrying the highway of Sheepway over the Portishead Branch Line Railway, a permanent diversion of the existing permissive cycle path and works to the existing public car park to the west of Sheepway, together with fencing, drainage, communications apparatus, ducts, troughs, utilities apparatus, hardstanding and means of access to the highway of Sheepway;

**Work No. 10** – temporary diversion of the existing permissive cycle path, on the north west side of the highway of Sheepway, opposite Shipway Gate Farm, Portbury;

**Work No. 10A** – temporary construction compound, to the north-west of the highway of Sheepway at Shipway Gate Farm, Portbury;

**Work No 10B** – temporary construction haul road, at Shipway Gate Farm, Portbury;

**Work No. 11** – improvements to the existing agricultural access from Shipway Gate Farm, Portbury to the highway of Sheepway south of the disused Portishead branch line;

**Work No. 11A** – temporary construction haul road, east from the highway of Sheepway, to the south of and parallel to disused Portishead Branch Line to Work No. 12A;

**Work No. 11B** – temporary construction haul road to the south of the highway of Sheepway at Shipway Gate Farm, Portbury;

**Work No. 12** – permanent new access to the A369 classified road known as Portbury Hundred;

**Work No. 12A** – temporary construction compound, to the north of the A369 classified road known as Portbury Hundred and to the south of the disused Portishead Branch line;

**Work No. 13** – improvement of the existing access and parking area, at The Drove, Portbury, to the north of the A369 classified road known as Portbury Hundred, including additional permanent car parking spaces and improvement of existing car parking area;

**Work No. 13A** – temporary vehicle turning circle south of the disused Portishead branch line, Portbury;

**Work No. 14** – improvement to bridleway LA15/21/20, at its junction with the highway of Royal Portbury Dock Road, Portbury;

**Work No. 14A** – improvement to bridleway LA8/66/10, at its junction with the highway of Royal Portbury Dock Road, Portbury;

**Work No. 14B** – realignment of the existing permissive cycling route, under Royal Portbury Dock Road, Portbury;

**Work No. 15** – temporary path of 11 metres in length to connect bridleway LA8/66/10 with the highway of Marsh Lane, on the western side of Marsh Lane, Easton in Gordano, and north of the disused Portishead branch line;

**Work No. 16** – realignment of the existing permissive cycling route parallel to the disused Portishead branch line railway passing under the highway of Marsh Lane, Easton in Gordano, and connecting with bridleway LA8/67/10;

**Work No. 16A** – temporary construction compound beneath the M5 Special Road Avonmouth Bridge, Easton in Gordano;

**Work No. 16C** – road rail access point, west of the Avonmouth Bridge of the M5 Special Road, Easton in Gordano;

**Work No. 17** – temporary construction compound at Lodway Farm, Pill, together with access to the highway of the Breaches, Easton in Gordano;

**Work No. 17A** – temporary construction haul road between Work No. 17 and footpath LA8/5/40, Pill;

**Work No. 18** – bridleway, commencing at a point to the west of the M5 Special Road and passing under the Avonmouth Bridge of the M5 to join National Cycle Network Route 41 between the Avonmouth Bridge of the M5 Special Road and Pill;

**Work No. 19** – installation of new and alteration of existing railway signal equipment, troughs and cables, on the Bristol Port Company's railway from Portbury Junction and a new railway signal at the Bristol Port Company's Royal Portbury Dock;

**Work No. 20** – temporary diversion of part of National Cycle Network Route 41 north from its existing alignment on the street north of the Portishead Branch Line, west of Avon Road, Pill, to connect with the western turning head of Avon Road, Pill;

**Work No. 20A** – demolition of existing bridge carrying the Portishead Branch Line over footpath LA8/5/40 and construction of new bridge and abutments, south of Avon Road, Pill and north of Lodway Close, Pill;

**Work No. 20B** – demolition of existing garages and temporary construction compound, Avon Road, Pill;

**Work No. 21** – car park to the south of Severn Road and Monmouth Road, Pill, including landscaping, accesses to highway, signage, lighting, fencing, drainage ducts, troughs, communications apparatus and utilities apparatus;

**Work No. 21A** – road/rail access point, permanent railway maintenance compound and principal supply point building, south of Severn Road, Pill, including landscaping, lighting, fencing, drainage, ducts, troughs, communications apparatus, utilities apparatus, bat accommodation and associated access;

**Work No. 22** – new railway station, , comprising platform, ramp, signage, seating, ticket vending machine, closed circuit television equipment, passenger help point, information boards and displays, passenger refuge area, car park (including mobility impaired spaces) drop off point, and cycle parking facilities, demolition of No. 7 Station Road, lighting, fencing, landscaping, ground strengthening and stability works, communications apparatus, drainage and utilities apparatus, to the north west of Station Road, Pill;

**Work No. 22A** – improved bus waiting facility, on the highways of Lodway and Heywood Road, Pill, north of the Pill Memorial Club, Pill, together with retaining wall, lighting, drainage and utilities apparatus;

**Work No. 22B** – temporary construction compound within the car park of Pill Memorial Club, Lodway, Pill;

**Work No. 23** – temporary construction compound to the north of Pill Viaduct, Underbanks, Pill;

**Work No. 24** – permanent vehicular compound south of Ham Green Lake, together with a road/rail vehicle access point, permanent access south from the highway of Chapel Pill Lane to the compound and new fencing, lighting, landscaping, utilities connections, laying of electricity, water, drainage and communications conduits and apparatus together with a new access to Ham Green Lake and improvements to Chapel Pill Lane;

**Work No. 24A** – temporary construction compound of 6653 square metres in area accessed from the highway of Chapel Pill Lane, Ham Green, Pill; and

**Work No. 25** – reconstruction of accommodation bridge known as Quarry Bridge No. 2, temporary construction compound and temporary ramp for construction access to the railway, to the east of the Portishead Branch Line.

#### **In the City and County of Bristol:**

**Work No. 26** – permanent vehicular access, ramp, flood attenuation works and railway maintenance compound, east of the highway of the A369 classified road known as Clanage Road, Ashton, north of the Bedminster Cricket Club;

**Work No. 26A** – temporary construction compound east of the highway of the A369 classified road known as Clanage Road, Ashton, north of the Bedminster Cricket Club,

**Work No. 26B** – permanent vehicular access to the highway of the A369 classified road known as Clanage Road, Ashton from the land to the north of the Bedminster Cricket Club;

**Work No. 28** – improvement of the highway of Winterstoke Road at its junction with Ashton Vale Road, Ashton, including extension of existing left turn lane in to Ashton Vale Road, works to divert and install utility apparatus and installation of a new traffic signal control system, Ashton; and

**Work No. 29** – temporary compound within the rail freight facility at Liberty Lane, Bristol.

And in connection with such works further associated development within the Order limits consisting of—

- (a) permanent way (rail tracks) electrical equipment, power supply cubicles, cables, telecommunications apparatus, railway mobile communications masts and apparatus and signalling;
- (b) ramps, means of access (including temporary haul roads) and construction compounds;
- (c) embankments, aprons, abutments, shafts, foundations, retaining walls and structures, drainage, wing walls, fences, acoustic fences, catch fences, paths, access steps and culverts;
- (d) works to alter, divert, maintain, replace and repair the position of apparatus, including mains, sewers, pipes, drains and cables or for their protection;
- (e) works to clear, maintain and interfere with water courses other than a navigable water course;
- (f) landscaping and other works (including the creation of ponds) to mitigate any adverse effects of the construction, maintenance or operation of the authorised development described in the environmental statement;
- (g) works for the benefit or protection of land affected by the authorised development;
- (h) works required for the strengthening, improvement, maintenance or reconstruction of any streets;
- (i) works to level crossings;
- (j) works for the temporary diversion of public footpaths shown in the permanent and temporary stopping up and diversion plan;
- (k) trenching and cabling associated with the new signalling and communications masts;
- (l) strengthening earthworks and reconstructing retaining walls;
- (m) vegetation clearance, rock bolting and rock dowels and safeguarding of unstable slopes or rock faces by stone-picking and removal of loose rocks;
- (n) replacement or renewal of fencing;
- (o) repairs to existing underbridges and overbridges, adding barriers to bridge parapets and raising of bridge parapets;
- (p) alteration of the layout of any street permanently or temporarily, including but not limited to increasing or reducing the width of the carriageway of the street by increasing or reducing the width of any kerb, footway, cycle track or verge within the street or removing replacing, altering or providing splitter islands in streets;
- (q) works to place alter remove or maintain road furniture;
- (r) works to place, alter, divert, relocate, protect, remove or maintain the position of apparatus (including statutory undertakers' apparatus), services, plant and other equipment in, under or above a street, or in other land, including mains, sewers, drains, pipes, lights, cables, cofferdams, fencing and other boundary treatments and to provide connections to adjoining land and buildings;
- (s) landscaping, re-grading, re-profiling, contouring, noise barriers, works associated with the provision of ecological and archaeological mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development:

- (t) site preparation works, site clearance (including fencing and other boundary treatments, vegetation removal, demolition of existing structures and the creation of alternative highways or footpaths); earthworks (including soil stripping and storage and site levelling);
- (u) establishment of site construction compounds and working sites, temporary structures, storage areas (including storage of excavated material and other materials), temporary vehicle parking, construction fencing, perimeter enclosure, security fencing, construction related buildings, welfare facilities, office facilities, other ancillary accommodation, construction lighting, haulage roads and other buildings, machinery, apparatus, drainage systems, temporary bridges over watercourses, storage ponds, processing plant, works and conveniences;
- (v) pavement, kerbing and paved areas;
- (w) signing, signals, street lighting, road markings, traffic management measures including temporary roads and such other works as are associated with the construction of the authorised development; and
- (x) such other works, including working sites and works compounds, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which do not give rise to any materially new or materially worse adverse environmental effects to those assessed in the environmental statement.

*CLG Guidance on Associated Development*

- 14.6 Pursuant to section 115 of the 2008 Act, development consent can be granted for the NSIP and associated development. In April 2013 the Secretary of State for Communities and Local Government issued guidance on associated development (Planning Act 2008: associated development applications for major infrastructure projects – April 2013 "the **Guidance**"), which sets out its defining characteristics and illustrates the types of development that may qualify. Associated development must not be an aim in itself. In most cases, it is of a type normally brought forward with the primary development and must be subordinate to and necessary for the effective operation of the NSIP, and may include measures necessary to mitigate the effects of the primary development. It should be of a proportionate scale to the primary development. Examples given in the Guidance include:
- 14.6.1 Formation of new or improved vehicular or pedestrian access (to stations, work sites etc.), whether temporary or permanent;
  - 14.6.2 Alteration or construction of roads, footpaths and bridleways;
  - 14.6.3 Diversion or realignment of watercourses;
  - 14.6.4 Construction of new rail, road or foot bridges, viaducts or tunnels, and works to reconstruct, alter or replace existing ones; and
  - 14.6.5 Railway works and associated works (including freight sidings, passing loops, level crossings, gauge clearance and railway lines for moving aggregates during construction).

## **15. REQUIREMENTS, COCP AND CEMP**

- 15.1 Schedule 2 to the draft Order contains the proposed requirements by which the relevant planning authorities will control the carrying out of the DCO Scheme, with the input of other relevant statutory bodies where relevant. The proposed requirements have been discussed in meetings with the relevant planning authorities and reflect the conclusions of the Environmental Statement and Schedule of Mitigation submitted with the application (DCO Application Document References 6.3 etc. and 6.31 respectively).
- 15.2 The environmental mitigation measures are set out in the Master Construction Environmental Management plan (**CEMP**) and Code of Construction Practice (**CoCP**) (DCO Application Document References 8.14 and 8.15 respectively). Compliance with these documents is secured through requirement 5 in Schedule 2 of the draft Order.
- 15.3 The outline CEMP defines the overarching control measures and standards to be implemented throughout the construction of the DCO Scheme. If the draft Order is made, the outline CEMP will be a certified document. and will not require further approval by the relevant planning authority. It will form the benchmark for detailed CEMPs to be submitted prior to the commencement of a relevant Stage of the DCO Scheme as those stages are defined in Schedule 2 to the Draft Order.
- 15.4 The CoCP supports the CEMP and sets out the site-specific control measures during operation and construction, which have been developed in accordance with the principles within the CEMP.

## **16. COMPULSORY ACQUISITION**

- 16.1 The draft Order also seeks powers for the purposes of carrying out the authorised development to acquire rights and land pursuant to section 120 of the 2008 Act and powers, under section 120 (3) and (4), to authorise the creation, extinguishment and interference with interests in, or rights over, land (including the stopping up and diversion of public rights of way and private accesses). The compulsory acquisition powers sought are explained within the Statement of Reasons (DCO Application Document Reference 4.1) and discussed further below.
- 16.2 In summary the Order seeks freehold acquisition of the land required for the NSIP as well as areas of land for the Highway Works, adjacent to the existing highway, required for highway alterations and widening.
- 16.3 The Order also seeks:
- 16.3.1 temporary possession of land for haul roads to facilitate the construction of the authorised development;
  - 16.3.2 temporary possession of land for use as temporary construction compounds and haul roads;
  - 16.3.3 temporary access to the north and south of the railway at Avon Road and Lodway Close Pill for the installation of a new bridge to carry the railway over the path that connects those roads. At this location some garages are also scheduled for demolition to provide a working site and compound for the bridge works;

- 16.3.4 land at Ham Green is to be used for temporary access to Ham Green Lake during construction works before the new permanent access arrangements may be put in place;
  - 16.3.5 the acquisition of new rights to install soil nails to reinforce cuttings and embankments at locations in Pill. Temporary possession of these plots is also sought to ensure the Applicant can enter onto these plots to carry out works prior to acquiring any permanent right that may be required. Restrictive covenants are also proposed to be acquired to protect the soil nails once installed;
  - 16.3.6 works to install rock dowels, and to enable light descaling of rock faces in the Avon Gorge. It is proposed that temporary powers of occupation will be used to carry out the works, but the rock dowels will be retained permanently and not removed at the cessation of the period of temporary occupation; and
  - 16.3.7 access to land by Pill viaduct for repair works.
- 16.4 Open Space lands are included in the Order Land at Portishead, Portbury and Pill. Only at Portishead is freehold open space land proposed to be acquired. The open space land at Tansy Lane and Galingale Way that would be subject to permanent freehold acquisition amount to less than 200 square metres in area. It is submitted that the giving of land in exchanges is unnecessary and as a result no replacement land is proposed to be provided in exchange.
- 16.5 The case for certificates under SS 131 and 132 of the Planning Act 2008 is to be found in Appendix 5. Of the Applicant's Statement of Reasons (Document 4.1).

**17. THE PROVISIONS OF THE DRAFT ORDER**

- 17.1 This section of this memorandum explains the provisions of the draft Order (Document 3.1). Particular regard has been had to The Network Rail (Redditch Branch Enhancement) Order 2013 (2013 SI No. 2809) (the most recent Order for a railway under the 2008 Act), and the Silvertown Tunnel Order 2018, as one of the most recent Orders made by the Department for Transport for a linear scheme.
- 17.2 A table setting out a comparison between the Model Provisions and the articles in the Order is appended to this Memorandum as Appendix 1. This explains where articles have deviated from the Model Provisions along with a rationale for doing so.

**Preliminary Provisions**

- 17.3 Articles 1 to 3 of the draft Order contain preliminary provisions. These are summarised in Table 2 below:

**Table 2: Preliminary Provisions**

Article 1 Citation and commencement	This article provides for the commencement and citation of the draft Order. It will include the date on which the draft Order comes into force.
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<p>Article 2 Interpretation</p>	<p>This article provides for the interpretation of the draft Order.</p> <p>In the draft Order ‘commence’ is largely defined based on the precedent of The Northampton Gateway Rail Freight Interchange Order 2019 (2019 SI No. 1358). The definition of commence refers to S155 of the 2008 Act but in addition to the definition in the Northampton Gateway Rail Freight Interchange Order 2019 the definition excludes certain preliminary operations which will not trigger the initiation of the consented development. In addition laying out of compounds and erection of protective fencing are included.</p> <p>This makes it clear that carrying out a number of specified activities that would constitute a ‘material operation’ do not mean that the authorised development has been ‘commenced’. This is required to allow the Applicant to carry out certain preliminary activities to prepare the site for development in advance of discharging all relevant pre commencement requirements. The works that are excluded from the definition of commencement are either limited in extent or have minimal potential for adverse impacts. They may in some cases need to be carried out in order to comply with the pre-commencement requirements.</p> <p>In the draft Order 'maintain' is defined to include inspect, repair, adjust, alter, remove, reconstruct, replace or improve but only to the extent that this has been assessed in the Environmental Statement (Docs. 6.3 etc.).</p> <p>'Undertaker' is defined to include successors benefitting from the Order.</p> <p>Article 2(2) provides that a broad definition of ‘rights over land’ applies to the Order.</p>
<p>Article 3 Incorporation of the Railway Clauses Acts</p>	<p>This article follows the Model Provisions, with amendments. The relevant provisions of the statutory mining code, as it applies to railways, are incorporated. The authorised development is in part within an area of historic mining activity and therefore the mining code is appropriately incorporated in to the draft Order. The draft Order's provisions appropriately apply those provisions of the Railway Clauses Consolidation Act 1845 (1845 c.20) and Railways Clauses Act 1863(1863 c.92) that are of general application and do so in a form used by Network Rail in similar Orders.</p>

### Operative Provisions

17.4 Articles 4 to 56 of the draft Order contain the operative provisions proposed for the authorised development, and miscellaneous and general provisions.

**Table 3: Operative Provisions**

<p>Part 2</p>	<p>Principal powers</p>
<p>Article 4 Application and</p>	<p>This article seeks, as permitted by section 120(5) of the 2008 Act, to incorporate and modify legislative provisions which are necessary for</p>

<p>modification of legislation</p>	<p>carrying out the authorised development. The reasons why these modifications are believed to be necessary are explained below.</p> <p>Articles 4(1) disappplies the provisions of the Neighbourhood Planning Act 2017 (2017 c. 20) insofar as they relate to the powers of temporary possession or use of land pursuant to the draft Order. This is necessary as the provisions of the 2017 Act are not yet in force and it is not known when they may come in to force. The potential for significant change to the processes and timetable requirements in the 2017 Act could have a material impact on the Applicant's delivery programme and could significantly impact on the ability to deliver the authorised development on time. This potential uncertainty is therefore sought to be avoided. The principle of disapplication has been previously accepted by the Secretary of State – see for instance the Silvertown Tunnel Order 2018 (2018 SI No. 574), article 3(1)(p). The wording used in article 4 of the draft Order follows Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018 2018 SI No. 937).</p> <p>Article 4(2) relates to the Community Infrastructure Levy (CIL). It provides that the Community Infrastructure Regulations 2010 (2010 SI No. 948) are excluded. This is believed necessary because North Somerset District Council has a CIL Schedule in place and it is necessary to clarify that the CIL Schedule will not apply to Portishead Station. It is common for CIL to be disappplied for NSIPs. See for example the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (2014 SI No. 2384), Article 14. The disapplication is necessary as the proposed Portishead and Pill Stations might otherwise be treated as having a CIL liability. This would not be appropriate for development that is itself publicly funded infrastructure.</p>
<p>Article 5 Development consent etc. granted by the Order</p>	<p>This article is based on the Model Provisions. It explains the Order would grant development consent for the authorised development, authorising the construction of the NSIP and associated development.</p> <p>The authorised development means the development described in Schedule 1 (Authorised Development). The authorised development must be carried out in accordance with the provisions in the Order including the requirements set out in Schedule 2 (Requirements) and within Order limits.</p>
<p>Article 6 Planning permission</p>	<p>This article provides that planning permission may be granted for development that is not a nationally significant infrastructure project within the Order limits after the Order comes in to force. Development authorised under the Town and Country Planning Act 1990 (1990 c.8) (whether by a planning permission or as permitted development) would not constitute a breach of the provisions of the Order.</p> <p>This is necessary to enable Network Rail to carry out works to the operational railway following the carrying out of the authorised development, whether authorised by express permission or as permitted development applying to railways without being in breach of the terms of</p>

	<p>this Order.</p>
<p>Article 7 Limits of deviation</p>	<p>of</p> <p>This article allows for limits of deviation for works authorised by the draft Order. The article requires that linear works are constructed within the limits of deviation for the relevant work shown on the works plans (DCO Application Document Reference 2.3).</p> <p>All non-linear works are to be constructed within the areas shown on the works plans for that Work.</p> <p>Vertical deviation for the linear works from the levels shown on the section drawings – the Longitudinal Profile of Railway Alignment (Section Plans) (DCO Application Document Reference No. 2.9) are permitted upwards by 0.5 metres and downwards to not exceed 0.5 metres.</p> <p>Limits of deviation for linear works are common to allow for minor variations to the authorised works if necessary to reflect proposals in engineering drawings being adapted to reflect minor construction changes necessitated by conditions ascertained only after the issue of consent.</p>
<p>Article 8 Maintenance of authorised development</p>	<p>This article provides for the maintenance of the authorised development. The wording is taken from the Network Rail (Redditch Branch Enhancement) Order 2013 (2013 SI No. 2809), with adaptations to reflect that this application includes environmental assessment, unlike the Redditch scheme. The article is necessary to authorise maintenance activities for the authorised development following construction. This is essential for the provision of a passenger rail service as part of the national rail network.</p>
<p>Article 9 Benefit of Order</p>	<p>This article provides that the Order has effect for the Applicant, subject to the ability to transfer powers with the Secretary of State's consent or by agreement with Network Rail.</p>
<p>Article 10 Consent to transfer Benefit of Order</p>	<p>This article provides the ability for the Applicant to transfer or grant by way of lease, the benefit of the order or any part of it. The drafting is based on the Model Provisions but adapted to reflect the intention to transfer to Network Rail the benefit of those parts of the Order that apply to existing or proposed operational railway. Paragraph (4) requires the Secretary of State's and Network Rail's consent to such transfer unless the transfer is to Network Rail. The ability to transfer powers to Network Rail without the Secretary of State's consent reflects the intention that the railway elements of the Works will become part of the national rail network.</p>
<p>Article 11 Agreements with Network Rail</p>	<p>This article would allow the Applicant and Network Rail to enter into agreements for construction, maintenance, use and operation of the authorised development. It also allows for arrangements to be entered into jointly between the applicant and Network Rail.</p> <p>It is clear from pre-application consultation that Network Rail will be responsible for the operational railway. It is therefore considered unnecessary for the Secretary of State's consent to be required for a</p>

	transfer of powers to Network Rail.
	<b>PART 3 – STREETS, HIGHWAYS AND LEVEL CROSSINGS</b>
Article 12 Application of the 1991 Act	<p>This article is based upon and extends the wording of the Model Provisions, reflecting practice in Orders recently made under the 2008 Act. In particular there is precedent for the provisions (albeit with alterations to reflect that the Applicant for this application is also the relevant highway and traffic authority), in the Silvertown Tunnel Order 2018 (SI 2018/574). The Article modifies the application of the New Roads and Street Works Act 1991 (1991 c.22) (the <b>1991 Act</b>) to works carried out under the powers of the Order.</p> <p>The article provides that certain works carried out under the Order would be "major highway works" for the purposes of the 1991 Act. This clarifies the cost sharing provisions relevant to the diversion of utility apparatus (which would apply to such works under the 1991 Act if carried out by the highway authority) and makes it clear that they will apply for the works authorised by the Order.</p> <p>Paragraph (3) provides that certain provisions in the 1991 Act listed in the paragraph will not apply to the works. This is appropriate given the scale of works proposed under the Order at Quays Avenue in particular, and the fact that authorisation for the works will have been given by the Order in respect of the proposed works at Quays Avenue.</p> <p>Paragraphs (4) to (6) apply to certain provisions of the 1991 Act to streets that may be temporarily stopped up under the Order. This avoids confusion as to whether the works in respect of temporarily stopped up streets would be street works for the purposes of the 1991 Act and provides for a single process in dealing with streets, whether or not they are being stopped up or not.</p>
Article 13 Street works and power to alter the layout etc. of streets	<p>This article confers authority on the Applicant to carry out the works listed in article 13(1) (a) – (l) for the purposes of the authorised development affecting the streets specified in Schedule 3 (Streets subject to street works).</p> <p>The article is included to make it clear the Applicant does not require a street works licence pursuant to the 1991 Act to carry out such works. However, the inclusion of this article in the Order will provide a statutory right for the purposes of sections 48(3) (streets, street works and undertaker) and 51(1) (prohibition of unauthorised street works) of the 1991 Act to undertake street works within the specified streets without the need for the Applicant to obtain a separate licence from the street authority. As the authorised development requires a number of activities within streets or affecting streets, the power is considered necessary for the expedient carrying out of such activities.</p>
Article 14 Permanent Stopping up of Streets	<p>This article makes provision for the stopping up of streets permanently and, where specified, for a substitute to be provided. The streets are specified in Schedule 4 (Streets to be stopped up).</p> <p>Part 1 of Schedule 4 (Streets to be permanently stopped up) of the Order</p>

	<p>identifies the street to be permanently stopped up subject to this article and an alternative street provided.</p> <p>This article also makes provision for all rights of way (both public and private) in the stopped up streets to be extinguished.</p> <p>Provision is made for the payment of compensation.</p> <p>The article is based upon the wording of the Model Provisions.</p> <p>Part 1 of Schedule 4 (Street for which a substitute is to be provided) provides for the stopping up of the length of Quays Avenue in Portishead that is to be diverted west, to enable the new Portishead Station to be constructed. Stopping up is necessary to enable development of the new station, and its associated car park, new cycle track and landscaping on the route of the existing Quays Avenue. The development proposed could not be carried out without the diversion. The location of the new station was the subject of a consultation process prior to S46 notification.</p> <p>Part 2 of Schedule 4 (Streets for which no substitute is to be provided) refers to two historic ways that existed before the railway was built in the 1860s. The Portishead Pier and Railway Act 1863 (26 &amp; 27 Vict. C. cvii) and its associated book of reference and land plans do not clearly indicate whether the two ways – Moor Lane in Portishead and The Drove, north of the Portbury Hundred and east of Station Road Portbury - were highways at the time the railway was constructed.</p> <p>Neither is currently in use as a highway, nor accessible, but it is considered sensible to ensure clarity through formally extinguishing any such highway as may have existed and which may still exist.</p>
<p>Article 15 Temporary stopping up of streets and public rights of way</p>	<p>This article provides for the temporary stopping up diversion or alteration of streets and public rights of way for the purpose of carrying out the authorised development, either as specified in Schedule 5 (Streets to be stopped up temporarily) or subject to the consent of the relevant highway authority. It is included in the Order as it will be necessary for the Applicant to temporarily stop up the streets, (being streets for the purposes of Section 48 of the 1991 Act) and other public rights of way. It includes those listed in parts 1 or 2 of Schedule 5, during the construction period, for both safe working and for the availability of compound and working space areas.</p> <p>The power in article 15(1) is required to enable the Applicant and Network Rail to instigate works close to public rights of way, including those in the Avon Gorge, when only temporary closures of short duration are required to enable works to the existing railway or to carry out vegetation clearance and management works. Article 15(2) allows temporarily closed bridleways and footpaths to be used as temporary work sites, which is essential given the limited space available for the works required.</p> <p>The wording is based upon precedent in other Development Consent Orders such as the National Grid (Hinkley Point C Connection Project) Order 2016 (2016 SI No. 49), but adapted to reflect the inclusion within this draft Order of a schedule detailing a street that will be temporarily</p>

	<p>stopped up and a substitute provided.</p> <p>The street listed in Part 1 of Schedule 5 (Street to be stopped up temporarily for which a substitute is to be provided) is the route west from Avon Road in Pill to the M5 Avonmouth Bridge. This street is used by pedestrians, cyclists and riders of motorised cycles of less than 50cc capacity to access to the M5 Avonmouth Bridge. The route is required to be closed during the work to reconstruct the bridge carrying the adjacent railway over the route between Avon Road and Lodway Close in Pill. A temporary alternative route is proposed through the adjacent area known as Jenny's Meadow, to the north of the street during the construction work. This will provide a continuous route between Pill and Shirehampton for users of the cycle track crossing the River Avon on the M5 Avonmouth Bridge.</p> <p>Part 2 of Schedule 5 (Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension) describes bridleways or footpaths will be temporarily suspended as part of the authorised development are carried out but which will be again available to the public following completion of the construction works for the authorised development. These are a bridleway and a footpath, which both terminate under the M5 Avonmouth Bridge close to Royal Portbury Dock. A substitute is not proposed for either as the current termination point of both public rights of way will be the site of a principal compound for the works, under the M5. The geographic constraints imposed by the Royal Portbury Dock and the M5 Special Road mean that substitute temporary routes are impractical. The existing highway network south of the M5 provide alternative routes on existing highway.</p>
<p>Article 16 Bridleways, cycle tracks and footpaths</p>	<p>This article has been included in the Order to allow for the diversion stopping up and creation of public rights of way.</p> <p>Section 136 of the 2008 Act states that the Order may include the stopping up of a public right of way provided that an alternative right of way will be provided, or it can be shown an alternative is not required. This article makes provision for the stopping up of public rights of way and for alternative public rights of way to be created to maintain connectivity within the public rights of way network.</p> <p>Part 1 of Schedule 6 (Footpath to be diverted) of the Order identifies the public right of way that affected by this article. It specifies the extent of the permanent stopping up, of the public footpath in the City of Bristol with the reference BCC/422/10, which crosses the railway at the level crossing known as Ashton Containers or Barons Close Level Crossing. Column 4 indicates the substitute public right of way to be created by the Order, using the existing but currently permissive path constructed as part of the maintenance access for the adjacent MetroBus bus way, before utilising the existing all-purpose Ashton Vale highway level crossing and the footway of Winterstoke Road to regain the commencement point of Barons Close. The Schedule fixes terminus points for the substitute right of way to be created. It is considered that the continued existence of the pedestrian crossing, given its lack of defined walking route and the user interface risk between both trains and the MetroBus route, gives rise to</p>

	<p>safety concerns. The combination of the route provided by the MetroBus scheme north to Ashton Vale Road and the gated, CCTV equipped Ashton Vale Road level crossing provide a safer walking route for pedestrians.</p> <p>Part 2 of Schedule 6 (New public rights of way to be created) specifies new public rights of way which are to be created by Article 16 (3).</p>
<p>Article 17 Access to works</p>	<p>This article allows the Applicant to form or use accesses to the highway network from neighbouring land for the purposes of the authorised development. A number of accesses are required to be created or used to permit construction traffic for the authorised development. A number of new permanent accesses are required to provide accesses to the highway network as replacements for accommodation crossings, for new accesses to car parks and maintenance facilities and for new accesses to land where the current access is affected by the authorised development.</p> <p>The ability to create additional accesses or improve existing accesses within order limits is permitted, if approved by the relevant planning authority. The wording follows the similar article in the Network Rail (Redditch Branch Enhancement) Order 2013 (2013 SI No. 2809), with amendments to fit the definitions used in the draft Order.</p> <p>The wider power to temporarily stop up streets and public rights of way in Order limits but not those listed in Schedule 5 is subject to securing the consent of the relevant highway authority for that highway.</p> <p>The inclusion of this broad power is considered to be appropriate as it will help to ensure that the authorised development can be carried out swiftly by allowing the Applicant to create new temporary accesses if required for the efficient construction of the authorised development or if additional accommodation works are required.</p>
<p>Article 18 Agreements with street authorities</p>	<p>This article is included to allow the Applicant to enter into agreements with the relevant highway or street authority relating to the construction of a new highway, carrying out of works in highways or streets, stopping up, alteration or diversion of highways and streets, maintenance of the structure of any bridge carrying a highway or street over or under a railway and landscaping. The wording is based on that included in the Silvertown Tunnel Order 2018(SI 2018/574).</p>
<p>Article 19 Construction and maintenance of new or altered streets</p>	<p>This article provides for any street constructed under the Order to be completed to the reasonable satisfaction of the street authority. For Quays Avenue this will be North Somerset District Council as local highway authority.</p> <p>Where a street is altered or diverted it must be maintained by the Applicant for a period of 12 months from completion and thereafter will be maintained at the expense of the street authority. The actual date of completion of the works is to be agreed by the Applicant and street authority acting reasonably.</p> <p>The drafting is adapted from the wording in the Silvertown Tunnel Order 2018(SI 2018/574), adapted to reflect that the Applicant is also the street authority for the new highway of Quays Avenue that is being created, and</p>

	<p>also that the land required for the new highway is already owned by the Applicant.</p>
<p>Article 20 Closure of level crossings and crossings over disused railway</p>	<p>This article provides for the closure of crossings route over the disused railway, by reference to Schedule 8 (Closure of crossings) of the Order.</p> <p>A crossing on the level forming part of Quays Avenue in Portishead has come into existence since the cessation of railway services, with the rails being severed on either side of the carriageway. This route will be replaced by a diverted Quays Avenue to the west of the new Portishead station.</p> <p>A crossing on the level to the south of the Trinity Primary School, Portishead will be replaced by a new bridge over the railway at approximately the same location. The crossing came in to existence subsequent to the cessation of rail services. The crossing is not shown on the Council's definitive map of public rights of way but is currently well used by the public.</p> <p>Since railway services had ceased to operate before either of the crossings were used as routes to cross the disused railway, it does not appear the routes are level crossings for the purposes, for instance, of the Level Crossings Act 1983 (1983 c. 16).</p> <p>For the avoidance of doubt the DCO provides that the two crossings (whatever their status) are extinguished. These are described in Schedule 8 Part 1 (Crossings: works required).</p> <p>Quays Avenue will be located at Portishead station and the crossing close to Trinity Primary School is located on land that will be come running line. Both crossings will be replaced. Quays Avenue will be diverted west from its current alignment.</p> <p>The crossing south of Trinity Primary School will be replaced by Work No. 7 – a new foot and cycle bridge.</p> <p>Paragraphs (1) and (2) provide for the closure of all public and private rights over the crossings.</p> <p>Paragraph (3) of article 20 states the existing crossings may not be closed permanently until the replacement route specified in part 1 of Schedule 8 is available for use.</p> <p>Further consideration has been given to access whilst the new bridge replacing the existing rights is in the course of construction. As the bridge will be located on the route of the existing crossing, paragraphs (4) and (5) provide for a temporary alternative crossing, to be provided to the reasonable satisfaction of the local planning authority, for an alternative temporary route on the level over the disused railway within Order lands for the passage of pedestrians and cyclists whilst the works to construct parts of Work No.1 and Work No.7 are carried out. This ability to temporarily close the existing crossing is essential as the replacement facility – Work No.7 – will be constructed over part of the existing crossing approach. The ability to provide a temporary alternative route allows for safer construction of Work No.7 and removes the need for a</p>



	<p>significant diversion for uses of the crossing during the construction period. Schedule 8 Part 2 (Crossings: temporary suspension) provides for a temporary suspension of the existing crossing whilst the existing crossing is not able to remain open during the period the new bridge is being built. When Work No.7 is in place and available for use the existing crossing will be permanently closed under article 20(1).</p> <p>Part 3 of Schedule 8 (Crossings: No works required) refers to two historic ways that existed before the previous railway was built in the 1860s. The Portishead Railway Acts, book of reference and land plans do not clearly indicate whether the two ways – Moor Lane in Portishead and The Drove, north of the Village of Portbury and Portbury Hundred and east of Station Road, Portbury - were in existence at the time the previous railway was constructed.</p> <p>Neither is currently in use as a highway, or accessible for use as a level crossing to pass from one side of the railway track bed to the other. It is considered sensible to secure clarity through formally closing such continued existence of the routes level crossings as may still exist. The continued existence of the two level crossings would be incompatible with the operation of a modern passenger railway and both have fallen in to disuse.</p>
<p>Article 21 Accommodation and occupation crossings</p>	<p>This article provides for the closure of all private crossings over the Disused Railway. The powers to close the scheduled crossings are required for the safe and efficient operation of a restored passenger service over the railway. It also seeks to remove any remaining private rights that may exist at the Barons Close Level Crossing in Bristol, as historic photographs suggest that private rights may have existed at that location, but which appear to have not been exercised for some time.</p> <p>These crossings are to be differentiated from those in article 20. Article 21 deals with private crossings used by owners and occupiers of land adjacent to the Portishead Branch Line and not available to the public.</p> <p>Schedule 9 (Accommodation and occupation crossings) provides details of the accommodation and occupation crossings to be closed. The Schedule is split into two parts. Part 1 (Crossings extinguished: works required) applies to those crossings for which a replacement facility is to be provided prior to closure of the existing crossing. Permission to effect the proposed alternative accommodation facility is sought as part of the authorised works (Works Nos. 11 and 12).</p> <p>Part 2 (Crossings for which no substitute is to be provided) deals with those closures of historic accommodation and occupation crossings for which no alternative provision is proposed. The crossings have been included because there is historic documented evidence or physical evidence of the crossing having existed. The removal of any residual rights for the crossings is included to allow for the safe and efficient operation of the authorised development.</p>
	<p><b>PART 4 – SUPPLEMENTAL POWERS</b></p>

<p>Article 22 Discharge of water</p>	<p>This article is required to allow for the drainage of the land within the Order limits in connection with the carrying out and maintenance of the development. Under the provisions of this article consent is required from the person who owns the relevant watercourse, public sewer or drain but such consent may not be unreasonably withheld. Whilst drainage of the disused railway trackbed exists and will be restored, new drainage connections are required in Portishead, in to the Portbury Ditch and the Cut, and also at Pill station. The power is therefore required to permit the use of those works once constructed.</p> <p>The drafting has been updated to refer to the Environmental Permitting (England and Wales) Regulations 2016.</p>
<p>Article 23 Authority to survey and investigate land</p>	<p>This article confers upon the Applicant a power to survey and investigate land, including the ability to make trial holes, to use and leave apparatus on the land in question and to enter onto land. The article also makes provision in relation to the payment of compensation and the notice period that must be given to owners and occupiers of land ahead of any surveys.</p> <p>The article is in standard form. Whilst the Applicant does have survey powers contained in other statutes it is believed that, for the purposes of the authorised development it is appropriate to include such survey powers in this Order so that the Applicant's power is exercised in accordance with the usual principles for the exercise of such powers applicable to similar infrastructure projects.</p>
<p>PART 5 – POWERS OF ACQUISITION</p>	
<p>Article 24 Compulsory acquisition of land</p>	<p>This article would confer on the Applicant powers of compulsory acquisition of so much of the Order Land as is required for the DCO Scheme or to facilitate it, or is incidental to it. The power is subject to the subsequent provisions of this Part of the draft Order. The article broadly follows the Model Provisions and follows the approach taken in the Silvertown Tunnel Order 2018(SI 2018/574).</p> <p>Detailed justifications for compulsory powers for land acquisition, new rights and temporary use are provided in the Applicant's Statement of Reasons (Document 4.1).</p> <p>The Applicant believes the expropriation powers contained in this and the following articles are essential to allow the authorised development to proceed in a reasonable time frame and is satisfied that a compelling need in the public interest exists for such powers.</p>
<p>Article 25 Modification of Part 1 of the 1965 Act</p>	<p>This article applies Part 1 of the Compulsory Purchase Act 1965 (1965 c. 56)(the <b>1965 Act</b>) to reflect section 125 of the 2008 Act. It reflects changes introduced by the Housing and Planning Act 2016 (2016 c. 22). The article also reflects recent amendments to the 1965 Act providing that where the making of the draft Order is subject to a statutory challenge, the deadline for the exercise of compulsory acquisition powers under the 1965 Act is increased by a period equivalent to the period beginning with the day the application is made, and ending on the day it is withdrawn or</p>

	<p>finally determined (or if shorter, one year).</p> <p>Paragraphs (2), (3) and (4) amend the provisions of the 1965 Act so that they are consistent with the terms of the Order. Paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 33 or 34 of the Order. Whilst this is not a Model Provision, there are precedents for this in, for example, the High Speed Rail (London – West Midlands) Act 2017 (2017 c. 7).</p> <p>This article also clarifies, by applying an amendment for the purposes of the draft Order to Schedule 2A of the 1965 Act, that the counter-notice provisions in that schedule that are available to landowners where part only of land is acquired compulsorily do not apply where the land has only been taken possession of under the temporary possession powers set out in article 33 or article 34.</p> <p>The article broadly follows the approach taken in the Silvertown Tunnel Order 2018 (SI 2018/574).</p>
<p>Article 26 Time limit for exercise of authority to acquire land compulsorily or take land temporarily</p>	<p>This article imposes a time limit of five years from the coming into force of the Order for the exercise of powers of compulsory acquisition of land. This follows the approach in the Model Provisions and is the recognised standard time limit for exercise of compulsory acquisition powers in infrastructure Orders.</p>
<p>Article 27 Compulsory acquisition of rights or imposition of covenants</p>	<p>This article enables the Applicant to acquire rights over land, whether new rights and existing rights. It also provides for the extinguishment or overriding of existing rights in land subject to the provisions of the article.</p> <p>The article is drafted so as to allow the Applicant flexibility to acquire new rights in the Order Land if appropriate rather than outright acquisition under article 24 (Compulsory acquisition of land). This flexibility allows the Applicant, if it is possible so to do, to reduce the areas required for freehold acquisition and rely on new permanent rights instead if this is appropriate. This flexibility is appropriate to allow for continued negotiations with owners of the Order Land. It broadly follows the Model Provisions and is a provision that is usual in Transport and Works Act Orders and hybrid bills.</p> <p>Provision is also made in paragraph (2) for the imposition of restrictive covenants on relevant order land if required for protecting the authorised works. The drafting is largely based on that contained in the Network Rail (Ordsall Chord) Order 2015 (2015 No. 780) made under the 1992 Act. The power has been extended to also allow covenants to be imposed for ecological mitigation purposes. The power is sought for the protection of the authorised development. It is in particular required to enable the Applicant and Network Rail to protect ground reinforcement works on neighbouring land. Whilst it is not necessary to acquire the freehold of the land in which the ground strengthening works are to be carried out, it is</p>

	<p>prudent to restrict the owner of the land from excavating the land and adversely impacting on the authorised ground strengthening works.</p> <p>The article is subject to Schedule 10 (Land in which only new rights etc. may be acquired), and states that in the case of land scheduled in Column 1 of Schedule 10, the new rights that may be acquired are limited to the new rights (and restrictive covenants where relevant) set out in Column 2 of the Schedule.</p> <p>Reference is also made to Schedule 11 (Modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictions) in the modifications of compulsory purchase legislation to apply appropriate provisions regarding material detriment etc. to the acquisition of new rights.</p> <p>Paragraphs (6) – (9) enable powers to acquire or rely on new rights to be transferred to a statutory undertaker. The transferred power will remain subject to the same restrictions, liabilities and obligations as would apply if the power was exercised by the Applicant. Paragraph (8) provides for the liability to pay compensation for the exercise of the acquired new right to be enforceable against the Applicant if the relevant statutory undertaker fails to pay compensation. Paragraph (9) provides that any agreement between the Applicant or Network Rail and the relevant statutory undertaker remains effective despite the provisions of paragraph (8).</p>
<p>Article 28</p> <p>Private rights over land subject to compulsory acquisition or temporary possession</p>	<p>This article applies to private rights generally, not just to rights of way over, in land either subject to compulsory acquisition under article 24 (Compulsory acquisition of land) or article 27 (Compulsory acquisition of rights).</p> <p>It provides that where land is compulsorily acquired, such private rights or restrictive covenants are suspended and unenforceable or (where the beneficiaries are notified by the Applicant), extinguished as far as their continuance would be inconsistent with the purpose for which temporary possession is taken for as long as the Applicant remains in lawful possession of the land.</p> <p>The article is necessary to ensure that any existing rights and covenants over land required for the DCO Scheme can be overridden or extinguished if compensation is paid to the beneficiary. This will mean that the construction and operation of the DCO Scheme will not be prevented because of the existence of rights or covenants over Order land.</p> <p>It also provides (in article 28(3)) for the suspension of private rights in Order land for which temporary powers are taken. The approach is based on that contained in the Silvertown Tunnel Order 2018 (SI 2018/574) and the Network Rail (Redditch Branch Enhancement) Order 2013 (2013 SI No. 2809).</p> <p>Compensation is payable under this article in accordance with the principles for the payment of compensation for injurious affection to land that would ordinarily apply to schemes where statutory authority is relied upon and a claim under section 10 of the 1965 Act arises.</p> <p>Paragraphs (6) and (7) allow the Applicant to provide notice countering</p>

	the effects of the provisions of the article, allowing the Applicant to confirm to the relevant owner of a dominant tenement that the rights that would by operation of this article be suspended and unenforceable are not so suspended or unenforceable.
Article 29 Power to override easements and other rights	<p>This article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4), and paragraphs 2 and 3 of Part 1 of Schedule 5 of the 2008 Act. This article has precedent in article 32 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (2014 SI No. 2384) and article 24 of the Silvertown Tunnel Order 2018 (SI 2018/574). This is subject to the amendments made to reflect the benefiting from this article being already owned by the Applicant and Network Rail.</p> <p>The article provides that for land in which authorised activities (as defined by paragraph (9) of the article) are carried out by either the Applicant or Network Rail Infrastructure Limited, the activity is authorised even if it interferes with an existing right or restriction of user over that land.</p> <p>This form of wording is appropriate for the purposes of the Order as the majority of the land forming the railway corridor is all in the ownership and possession of either the Applicant or Network Rail Infrastructure Limited. As a result the provisions of article 28 might not be engaged but the Applicant and Network Rail require a power to override or extinguish covenants or rights that might prevent the operation of the railway. This article ensures that powers similar to those contained in sections 203-5 of the Housing and Planning Act 2016 (2016 c. 22) are available for the DCO Scheme.</p>
Article 30 Application of the Compulsory Purchase (Vesting Declarations) Act 1981	<p>This article provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 (1981 c. 66) and provides for that Act to have effect subject to certain modifications. It gives the Applicant the option to acquire land by this method rather than through the notice to treat process. It is anticipated that the Applicant will seek to vest title in itself of at least some of the Order land.</p> <p>This article is based on the Model Provisions and has been updated to reflect the changes brought about by the Housing and Planning Act 2016 (2016 c.22) including the amendments to the Compulsory Purchase (Vesting Declarations) Act 1981, and provides that where the making of the Order is subject to a statutory challenge, the deadline for the exercise of compulsory acquisition powers under the Compulsory Purchase (Vesting Declarations) Act 1981 is increased by a period equivalent to the period beginning with the day the application is made, and ending on the day it is withdrawn or finally determined (or if shorter, one year).</p>
Article 31 Acquisition of subsoil or airspace only	This article authorises the Applicant to acquire the subsoil in any Order land without acquiring the whole of that land. In certain cases it may be necessary only to acquire a stratum of land below the surface and in the absence of this article the Applicant would be obliged to acquire the whole interest in the land.

	<p>This article is adapted from the Silvertown Tunnel Order 2018 (SI 2018/574), reflecting the absence of new tunnels to be constructed in the authorised development proposed by this application. There are a number of existing tunnels within the Order land however and to which this power may apply.</p>
<p>Article 32 Rights under or over streets</p>	<p>This article reflects article 28 of the Silvertown Tunnel Order 2018 (SI 2018/574) and provides that the Applicant may use a street within the Order limits for the authorised development without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation to an owner or occupier of land where their interest in land is not acquired and who suffers loss as a result. The power is required as the Order land includes a number of streets and the Applicant may elect to not seek the freehold of all streets when freehold ownership is not required for the Applicant to have sufficient power to carry out the required activities.</p>
<p>Article 33 Temporary use of land for carrying out the authorised development</p>	<p>This article will allow the Applicant to take temporary possession of the land included in Schedule 12 (Land of which temporary possession may be taken).</p> <p>The power is required to allow the Applicant and Network Rail access to land for constructing the authorised development, for compounds, haul roads and working space. It is to be exercised where land need not be taken permanently by the Applicant but possession of or access over that land is needed to enable the Applicant to construct the authorised development. The power also applies to land over which powers of acquisition are sought, but allowing the Applicant to take possession of the Order Land in a comprehensive manner and in a single process of notice serving, to allow it to enter land temporarily to commence works before vesting occurs.</p> <p>The article therefore provides for other Order Land in respect of which notice of entry has not yet been served under Section 11 of the 1965 Act and no vesting declaration has been made under the Compulsory Purchase (Vesting Declarations) Act 1981 (1981 c.66) to be used temporarily. It also provides that only new rights in land can be acquired compulsorily over the plots listed in the schedule of plots for which temporary possession powers may be exercised; and for permanent works may be constructed whilst temporary possession notices are in effect but before permanent new rights have been secured. This broadly follows the Model Provisions but has been modified in line with a number of recent DCOs, including the East Anglia THREE Offshore Wind Farm Order 2017 (2017 SI No. 826). A benefit of structuring the Order powers in this way is also to limit the amount of land that need be ultimately acquired, or over which new rights are acquired, from landowners. As works may be constructed prior to permanent acquisition of land, permanent land interests can be acquired for the scheme "as built", with no need to account for uncertainties in as-built construction in terms of land acquired.</p> <p>Article 33 provides that powers to take possession of land temporarily, if land is specified in Schedule 12, may be used only for the specific</p>

	<p>purposes set out in column 3 of Schedule 12.</p> <p>Article 33(1) lists the circumstances in which temporary possession powers may be exercised. Article 33(1)(d) follows the precedent in the Silvertown Tunnel Order 2018 (SI 2018/574) in allowing the power to be exercised for the purposes of constructing permanent works authorised by the Order and described in Schedule 1 to the Order. This wide power is required to allow the Applicant to have a comprehensive and flexible approach to land assembly for construction.</p> <p>33(4)(e)(ii) is drafted so as to allow the Applicant and Network Rail to carry out works within the Avon Gorge to stabilise the cliff faces in the Avon Gorge on land held by neighbouring landowners. Owners would remain responsible for rock falls on to the operational railway. The Applicant will give up possession of the stabilised rock faces without being required to first remove the stabilisation works that will have been carried out by the Applicant.</p> <p>For plots that are scheduled for temporary possession, Article 33(8)(a) excludes freehold compulsory acquisition, but still permits the acquisition of permanent rights or the imposition of restrictive covenants under article 27 (as set out in Schedule 10).</p> <p>Article 33(8)(b) permits the acquisition of subsoil rights in any of the land, subject to Article 31. The Article is based on the Model Provisions but has been modified. This provision is commonly used on Transport and Works Orders. A similar provision was included in the Network Rail (Ordsall Chord) Order 2015 (2015 SI No. 780).</p> <p>The power to temporarily possess "any other Order land" (in respect of which notice of entry has not yet been served under Section 11 of the Compulsory Purchase Act 1965 and no vesting declaration has been made under the Compulsory Purchase (Vesting Declarations) Act 1981(1981 c. 66)), in addition to the land specified in Schedule 12, is unlikely to be exercised for the DCO Scheme. The article clarifies that unless permanent interests have been acquired in any land that the Applicant has taken temporary possession of, the Applicant must remove any temporary works and restore the land to the reasonable satisfaction of the owners of the land, but is not required to remove certain works such as rock and ground strengthening works.</p> <p>In all cases where powers of temporary possession are exercised, compensation must be paid to the landowner and any occupiers for loss or damage arising from their exercise where claimed.</p>
<p>Article 34 Temporary use of land for maintaining the authorised development</p>	<p>This article provides that the Applicant may take temporary possession of land within the Order limits required for the purpose of maintaining the DCO Scheme, and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date on which that part of the authorised development is first used. Provision is made for notice and compensation, subject to the specified situations of emergency set out in article 34(4)) which would enable the Applicant to give so much notice as is reasonable in the circumstances. This power does not apply with respect to houses, gardens or any other</p>

	<p>buildings for the time being occupied. The power is required to allow the Applicant and Network Rail access to Order lands not acquired compulsorily to carry out snagging or remedial works following construction of the authorised development.</p>
<p>Article 35 Disregard of certain interests and improvements</p>	<p>This article reflects section 4 (Assessment of compensation) of the Acquisition of Land Act 1981 (1981 c. 67). It is included to apply the effects of that section to compulsory acquisition under the Order. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3)) of the 2008 Act allow the application in a DCO of statutory provisions which relate to the process for determining the payment of compensation. It complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation.</p> <p>The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (2014 SI No. 2384) (article 37) and article 36 of the Silvertown Tunnel Order 2018 (SI 2018/574). The article follows the wording in the latter Order save the words "as part of the authorised development" have been omitted in both paragraphs of the article.</p> <p>The effect of the article, as with Section 4 of the Acquisition of Land Act 1981, is to allow the Tribunal to disregard certain interests in and enhancements to the value of land when assessing compensation if the interest or enhancement was designed with a view to obtaining compensation or increased compensation.</p>
<p>Article 36 Set-off for enhancement in value of retained land</p>	<p>This article provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.</p> <p>The article does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (2014 SI No. 2384) (article 38) and article 36 of the Silvertown Tunnel Order 2018 (SI 2018/574). Sections 120(3) and 120(5)(a) of, and Schedule 5 (by virtue of section 120(3)) to, the 2008 Act allow the application in a Development Consent Order of statutory provisions which relate to the payment of compensation.</p>
<p>Article 37 Statutory undertakers and electronics communications code network operators</p>	<p>This article authorises the Applicant to acquire land and new rights in land belonging to statutory undertakers as shown on the land plan within the limits of the land to be acquired or used and described in the book of reference. This article is adapted from the Model Provisions and extended to deal with electronic communications code operators. The article is required to allow the Applicant to carry out the authorised development over land in which utilities hold an interest or have apparatus.</p>



Article 38 Recovery of costs of new connections	This article provides for compensation to owners or occupiers of property where apparatus is removed in accordance with article 37 (Statutory undertakers). This is a Model Provision. It is required to provide clarity as to how the parties' interests will be dealt with in the circumstances to which it applies.
	PART 6 – Operations
Article 39 Operation and use of railways	This article is included because part of the authorised development comprises the provision of a railway which is proposed to become part of the national rail network to which Network Rail's licence applies. The article is based on Article 27 of the Network Rail (Redditch Branch Enhancement) Order 2013 (2013 SI No. 2809).
Article 40 Operational land for the purposes of the 1990 Act	This article provides that land within the Order limits utilised for the railway and highway works shall be treated as operational land of a statutory undertaker for the purposes of Section 264 of the Town and Country Planning Act 1990 (1990 c. 8). The article is based on Article 29 of the Network Rail (Redditch Branch Enhancement) Order 2013 (2013 SI No. 2809).
	PART 7 – Miscellaneous and general
Article 41 No double recovery	This article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. It also provides that there is not to be double recovery under two or more different provisions of this Order. The wording can be found in article 38 of the Silvertown Tunnel Order 2018(SI 2018/574).
Article 42 Apparatus and rights of statutory undertakers in stopped up streets	<p>This article provides protection for statutory utilities' apparatus (pipes, cables, etc.) under streets that are stopped up by the Order. The Applicant may require a utility to relocate the apparatus subject to the Applicant paying compensation. As the Order would authorise the diversion of highways, in particular at Quays Avenue in Portishead, the article is required to regulate the relationship between the applicant and utilities with apparatus in the affected highway land.</p> <p>Paragraph (6) discounts from compensation due the amount of any increase in value to the statutory utility of having new apparatus if the previous apparatus was more than 7.5 years old.</p> <p>Paragraph (7) provides that in certain cases the cost of relocating apparatus will be subject to alternative cost sharing arrangements between the Applicant and the statutory utility which are provided for in regulations made under section 85 of the 1991 Act.</p>
Article 43 Felling or lopping of trees	<p>This article is included to enable the Applicant to fell or lop any tree or shrub near the authorised development, or cut back its roots, where it believes that it is necessary to prevent the tree or shrub from interfering with the authorised development, but subject to some exceptions.</p> <p>Articles 42(2) and (3) extend the powers in Article 43(1) to trees in</p>

	<p>conservation areas designated under <a href="#">section 69</a> of the <a href="#">Planning (Listed Buildings and Conservation Areas) Act 1990</a>. This power is required as the Order land touch the boundary of the Sneyd Park and City Docks Conservation Area within the Avon Gorge and there is a chance that some trees within North Somerset overhang Bristol City Council's administrative boundary. In addition within Bristol City Council's Bower Ashton Conservation area, at the Clanage Rd Compound (Work No. 26), some trees have been identified as needing to be removed and which may qualify for protection under the provisions of Section 69.</p> <p>The article makes provision for compensation to be payable for any loss or damage arising from the lopping or felling of trees, shrubs or hedgerows.</p> <p>The authorisation in Article 43 (1)(a) does not extend to trees subject to the Avon Gorge Woodlands SAC Management Plan (ES Appendix 9.11, DCO Document Reference 6.25).</p> <p>The power is required to allow for vegetation clearance for temporary works, such as haul roads or working space and also for fencing works for the authorised development.</p>
<p>Article 44 Important Hedgerows</p>	<p>This article permits the removal of scheduled hedgerows (Schedule 13 Part 1) and the important hedgerow specified in Schedule 13 (Part 2) (Important Hedgerow). Similar provisions may be found in a number of made Orders, including for instance article 37 of the Rampion Offshore Wind Farm Order 2014 (2014 SI no.1873).</p> <p>The article also provides (at Article 44 (1)(b)) a process for identifying other hedgerows that may need to be removed, subject to the approval of the relevant planning authority.</p> <p>Hedgerows are identified on the Hedgerows to be removed plan. With the exception of a short length of Hedgerow at Chapel Pill Lane, Ham Green, Pill, that is to be removed to provide access to a road rail access point providing access to the eastern portal of Pill Tunnel, all the hedgerows proposed for removal will be reinstated following the construction of the DCO Scheme. An Important Hedgerow has been identified within Order lands that is affected by the authorised development and therefore the power is required to allow the authorised development to be carried out.</p>
<p>Article 45 Defence to proceedings in respect of statutory nuisance</p>	<p>This article provides that no-one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 (1990 c.43) in respect of air pollution noise or light pollution, if it is created in the course of carrying out or maintenance of the DCO Scheme. It is not considered that any properties will be affected beyond statutory nuisance thresholds, as mitigation measures will be used to control emissions. However, the Applicant considers that this Article should be included in the event that proceedings are brought under Section 82 of the Environmental Protection Act 1990. This approach follows the Model Provisions. The DCO Scheme comprises nationally significant infrastructure and as a result it is appropriate that it is provided with the protection from proceedings contained in the article.</p>

<p>Article 46 Traffic regulation</p>	<p>This article provides powers for the Applicant to make traffic regulation orders as specified in Schedule 14 to the Order or otherwise make orders relating to traffic, parking, waiting loading or unloading of vehicles in streets for the proposed of the construction of the authorised development.</p> <p>The wording is largely based on the Network Rail (Redditch Branch Enhancement) Order 2013 (2013 SI No. 2809) but is adapted from the wording in that Order which sought only temporary TRO powers.</p> <p>The Applicant (who is also the local traffic authority is proposing permanent no parking orders in the vicinity of the proposed Portishead and Pill Stations. Accordingly Article 46(1) has been adapted using precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (2014 SI No. 2384).</p>
<p>Article 47 Application of the Land Compensation Act 1973</p>	<p>This article adopts the wording in the Network Rail (Redditch Branch Enhancement) Order 2013 (2013 SI No. 2809). It applies the sections of the Land Compensation Act 1973 (1973 c. 26) relating to soundproofing and expenses to the authorised development.</p> <p>This article is required to ensure the relevant statutory provisions for injurious affection arising from use of the authorised development will apply.</p>
<p>Article 48 Application of landlord and tenant law</p>	<p>This article is based on the Model Provisions and is frequently included in development consent orders. It provides that landlord and tenant law will be overridden so as not to prejudice the operation of any agreement entered into under the powers in the Order.</p>
<p>Article 49 Procedure in relation to further approvals, etc.</p>	<p>This article provides a mechanism for securing any consent or approval from a consenting body required by the provisions of the draft Order. The article is required to ensure that the authorised development is not unduly delayed by the need to secure a consent from a body other than a relevant planning authority.</p> <p>It deals with approvals required under the Order that are not approvals of details submitted to the relevant planning authority to discharge requirements. The article is based on the provisions of the Silvertown Tunnel Order 2018 (SI 2018/574).</p> <p>Procedures for discharges under requirements are dealt with in Schedule 2 of the draft Order and applied by sub paragraph (6).</p> <p>The Applicant has not applied the draft wording in Advice Note 15 in relation to these approvals because of the limited nature on extent of the approvals to which the article applies as a result of the definition in paragraph (7). The processes in the standard drafting for approvals would not readily fit with the processes to which the article applies.</p>
<p>Article 50 Service of notices</p>	<p>This article is included to ensure certainty regarding the procedure for service of any notice required by the Order, for example, under article 23 (Authority to survey and investigate land).</p> <p>It allows for service by first class post, by hand and by email with the</p>

	<p>consent of the recipient.</p> <p>The content follows similar provision in recently made Orders, including the Silvertown Tunnel Order 2018 (SI 2018/574) .</p>
<p>Article 51 Crown rights</p>	<p>This article protects the Crown's position in relation to its own estates, rights, powers, privileges, authorities and exemptions. The Crown's written consent is required where any land, hereditaments or rights of the Crown are to be taken, used, entered or interfered with as a result of granting of the Order, although there is no conditionality in respect of third party interests in Crown land. This article reflects recent Orders. The provision is required as the Order land includes land falling within S135 of the 2008 Act.</p>
<p>Article 52 Amendment of local byelaws</p>	<p>This article amends the provisions relating to the byelaws regulated by the North Somerset Levels Internal Drainage Board (<b>IDB</b>) which may otherwise restrict the authorised development in relation to works in proximity to watercourses over which the IDB has jurisdiction.</p> <p>The National Grid (Hinkley Point C Connection Project) Order 2016 (2016 SI No. 49) provided for similar disapplication of the byelaws in relation to that nationally significant infrastructure project. That project is in part located in the same IDB area as the authorised development.</p> <p>The Applicant has met with the IDB to discuss the authorised development and the disapplication of the IDB's byelaws and those discussions will continue.</p>
<p>Article 53 Protective provisions</p>	<p>This article gives effect to the protective provisions which are in Schedule 16. As a number of utilities have apparatus or interests in land within the Order Land such provisions are required and are being discussed between the applicant and the relevant utilities.</p>
<p>Article 54 Special category land</p>	<p>This article discharges any trusts and incidents over the open space land where it is proposed freehold interests are to be acquired permanently at Portishead. The power is required to allow the Applicant to carry out the authorised development without the Applicant being constrained by any currently applicable requirements or restrictions imposed on the land as open space.</p>
<p>Article 55 Documents to be Certified</p>	<p>This article requires specified plans and documents referred to in the Order to be submitted, as soon as practicable following the making of the Order, to the decision maker to be certified as a true copy. This is a frequently used provision in a number of recent made Orders.</p>
<p>Article 56 Arbitration</p>	<p>This article is based on the Model Provisions and provides for arbitration in cases of dispute between the Applicant and relevant parties.</p>

## 18. SCHEDULES

18.1 A number of schedules are included in the draft Order. These are summarised in Table 4 below:

**Table 4: Content of Schedules**

<b>Schedule 1</b>	<p><b>Authorised development</b></p> <p>This Schedule specifies the authorised development comprising the scheduled works. The scheduled works are detailed in Part 11 of this Explanatory Memorandum.</p>
<b>Schedule 2</b>	<p><b>Requirements</b></p> <p>This Schedule sets out the requirements the Applicant must comply with in respect of the authorised development.</p> <p>The requirements draw from the drafting of conditions in planning permissions for similar schemes and approved Orders for similar projects such as the Network Rail (Redditch Branch Enhancement) Order 2013 (2013 SI No. 2809) and the Silvertown Tunnel Order 2018 (SI 2018/574).</p> <p>The requirements secure the mitigation set out in the mitigation table within the Environmental Statement and allows for the detailed design of the DCO Scheme, which has not yet been finalised, to be approved by the relevant planning authority in accordance with plans submitted as part of the application for development consent where appropriate.</p>
Requirement 1 Interpretation	Provides clarification on definitions used in the requirements.
Requirement 2 Time limits	Specifies the time limit for commencing the authorised development as 5 years from the date of the Order, as provided for in Regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010 (2010 SI No 105).
Requirement 3 Stages of authorised development	<p>Lists the proposed Stages for the authorised development.</p> <p>The stages have been proposed to allow for a phased approach to the discharge of requirements that prevent certain activities from occurring before specified works may commence. This is necessary to reflect the different types of activity authorised, and because different contractors may be employed to carry out different works at different times. It is particularly relevant to allow for different timings and different contractors for highway and railway works. It is likely the highway contractor will be commissioned by the Applicant whilst any railway contractor will be required to conform to Network Rail's commercial and contractual policies, which may not all be relevant or necessary for non-railway works.</p> <p>The stages reflect the current intentions of the Applicant and Network Rail</p>

	<p>regarding timing and implementation of the authorised works.</p> <p>Whilst the current list of stages is reflective of the current intentions for implementation, it may become necessary to reallocate certain works to different stages or deal with works as sub stages.</p> <p>Paragraphs (1) and (2) therefore include the words " or such other stages of the Works that are agreed in writing agreed with the relevant planning authority" to allow the stages to be varied by agreement with the relevant planning authority.</p> <p>The ability to discharge requirements for parts of stages is provided for in paragraph (3).</p> <p>Paragraph (4) acknowledges the ability for the Applicant or Network Rail to carry out preparatory activities prior to discharging all pre commencement requirements for a stage.</p> <p>This level flexibility is necessary to allow the Applicant, Network Rail and their contractors the ability to have some flexibility in the implementation timetable.</p> <p>Any re-ordering of stages in due course will not impact on the conclusions of the Applicant's environmental statement.</p>
<p>Requirement 4 Submission and approval of detail design</p>	<p>Sets out the drawings providing a level of worked up design for the relevant element of the authorised development. It requires the authorised development to be carried out in accordance with the principles contained in those drawings. The drawings are not finalised detailed design drawings as Network Rail's GRIP 5 process or the Applicant's highway designs may evolve further. The drawings listed provide a level of information and clarity regarding the final design solution appropriate for this stage in the evolution of the authorised development.</p>
<p>Requirement 5 Construction Environmental Management Plan, etc.</p>	<p>Sets out those certified the role of the Master CEMP (DCO Application Document Reference 8.14) and CTMP (DCO Application Document Reference 8.13) It indicates the further details required to be submitted for each stage of the authorised development in relation to a CEMP for that stage. The CoCP, Master CEMP and CTMP (DCO Application Document References 8.15, 8.14 and 8.13 respectively) provide a mechanism for control by the relevant planning authorities for the construction activities proposed by the Applicant.</p> <p>The Master CEMP in particular provides for mitigation for the protection of wildlife. The individual stages of the authorised development must be carried out in accordance with the approved CEMP and CTMP, as well as the CoCP.</p> <p>Where authorised development falls outside of a Stage, the Master CEMP will apply.</p>
<p>Requirement 6 Landscaping scheme –</p>	<p>Requires a landscaping scheme for the disused railway between Portishead and Portbury Junction to be agreed by the relevant planning authority and carried out as approved. This is necessary to reduce the visual impact of the authorised development and to provide mitigation for bats and other</p>

disused railway	<p>animals using the railway corridor.</p> <p>The landscaping must be maintained for five years post implementation. The five year period is considered an appropriate balance between the need for landscaping and Network Rail's operational requirements.</p>
Requirement 7 Landscaping – other works	<p>Requires a landscaping scheme for the associated development where relevant landscaping is proposed, to be agreed by the relevant planning authority and carried out as approved.</p> <p>The requirement does not apply to the disused railway or works covered by the Avon Gorge Vegetation Management Plan (Appendix 9.11 to the Environmental Statement, DCO Application Document Reference 6.25).</p>
Requirement 8 Temporary fencing	<p>Requires that details of temporary fencing be provided to the relevant planning authority for approval prior to commencement of a stage. The fencing is to keep the construction works secure, and to prevent livestock incursion on to the authorised development. The fencing must be carried out as approved and removed following cessation of works in the relevant area within a time period agreed with the relevant planning authority.</p>
Requirement 9 Highway accesses	<p>Details for temporary or permanent accesses or haul roads must be approved by the relevant planning authority prior to the commencement of such works. If the accesses are temporary then the details for their removal must also be provided to the relevant planning authority together with an appropriate timetable.</p> <p>The approved details must also include, where relevant, provision for the removal of temporary accesses. Removal of haul roads is controlled by requirement 22.</p>
Requirement 10 Archaeology	<p>Written schemes of investigation are required for those works which include areas of archaeological interest identified by the Environmental Statement, to be approved by the Council's Archaeologist. It must identify where a watching brief is required and measures to protect, record or preserve significant archaeological remains and the works must be carried out in accordance with the approved written scheme of investigation.</p> <p>Paragraphs 6 and 7 deal with the protection of a specific feature identified by North Somerset Council's Archaeologist at the site of the proposed compound at Lodway Farm, Pill.</p>
Requirement 11 Surface and foul water drainage	<p>A stage must not be commenced until details for drainage have been approved by the relevant planning authority in consultation with the relevant drainage authorities from the Environment Agency. The approved systems must be installed in accordance with the approved details unless otherwise agreed in writing.</p> <p>The requirement does not apply to current operational railway land. This is because the authorised development does not propose significant changes to the drainage from the existing railway. The only drainage works for which development consent is sought on the existing railway are located in the vicinity of Pill Station and forms part of Work No. 21.</p>

<p>Requirement 12 Trees</p>	<p>A stage must not be commenced until a arboricultural method statement from that stage has been approved. It must identify protective fencing for trees for that stage and that fencing must be carried out and maintained during the construction period. The fencing must be removed at the end of the construction period in accordance with the time period set in the agreed by the relevant planning authority in the arboricultural method statement.</p>
<p>Requirement 13 Control of Invasive Plants outside of Avon Gorge Woodlands SAC</p>	<p>A stage must not be commenced until details for control of invasive species has been approved by the relevant planning authority and thereafter carried out.</p> <p>The Requirement does not apply to the Avon Gorge Woodlands SAC, to which the Avon Gorge vegetation management plan will apply.</p>
<p>Requirement 14 Avon Gorge Woodlands SAC</p>	<p>This requirement is included to provide regulation of the minor works proposed within the Avon Gorge Woodlands SAC and to link the Order to the Avon Gorge vegetation management plan submitted with the application and its associated process under The Conservation of Habitats and Species Regulations 2017 (2017 SI No. 1012).</p> <p>Works within the SAC must be carried out in accordance with the Avon Gorge vegetation management plan.</p> <p>Specified works within the Avon Gorge Woodlands SAC must not commence before details approved by the relevant planning authority in consultation with Natural England. The works must be located within the areas shown on the Environmental Masterplan and Habitat impacted by construction works within the Avon Gorge Woodlands SAC plan.</p> <p>Any temporary works within the Avon Gorge Woodlands SAC, including the compound associated with Work No. 25 must not commence before details for the removal of the relevant facility have been approved by the relevant planning authority in consultation with Natural England. The facilities must be carried out as approved and removed in accordance with the approved details.</p> <p>The mitigation and compensation works that are within Order Limits must be monitored and maintained following opening of the railway for passenger use, to the extent provided for in the Avon Gorge vegetation management plan.</p>
<p>Requirement 15 External lighting and control of artificial light emissions during construction</p>	<p>A stage of the works must not commence until details of any temporary external lighting to be installed have been submitted to and approved by the relevant planning authority. The approved means of lighting must be installed in accordance with the approved details. Construction lighting must be removed on completion of the relevant stage.</p> <p>The requirement is included to minimise the impacts of construction lighting on sensitive receptors.</p>



<p>Requirement 16 Construction Hours</p>	<p>Working hours are restricted to 6.30am-6pm Monday-Saturday. This does not however apply to works on existing highways, currently operational railway land or in compounds associated with works in those areas.</p> <p>In addition, some works may need to occur outside of the set working hours, to fit with Network Rail's possessions and blockades for the existing freight line, which will most likely work at weekends. Works outside of the times specified in paragraph (1) may therefore be authorised by the relevant planning authority.</p> <p>Requirement 16(3) specifies activities within compounds that may commence at 6 am Monday-Saturday</p>
<p>Requirement 17 Contaminated land and ground water</p>	<p>A stage should not be commenced until a scheme dealing with land contamination and ground water has been approved by the relevant planning authority in consultation with the Environment Agency. The scheme is thereafter to be carried out in accordance with the submitted details. The requirement is designed to stop the release of contaminants.</p> <p>Where remedial measures are to be taken with respect to any contaminants on the site, a verification plan must also be submitted providing details of the data that will be collected in order to demonstrate that the remedial measures are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.</p> <p>If contamination not previously identified is found no further development (unless otherwise agreed in writing with the relevant planning authority) is to be carried out until a remediation strategy had been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.. The remediation strategy must be implemented as approved.</p> <p>It does not apply to existing operational railway land.</p>
<p>Requirement 18 Works to Winterstoke Road, Bristol</p>	<p>The works at Winterstoke Road and Ashton Vale Road Junction must not commence until the detail design is approved, to include:</p> <ul style="list-style-type: none"> <li>(a) an extended left turn lane on Winterstoke Road for vehicles in to Ashton Vale Road; and</li> <li>(b) details for the installation traffic control measures designed to maximise the operational efficiency of the Winterstoke Road and Ashton Vale Road junction.</li> </ul> <p>The Work No. 28 must be carried out in accordance with the details approved prior to first commercial use of the disused railway.</p> <p>The requirement is included to provide for the proposed works at the Winterstoke Road and Ashton Vale Road Junction to maintain functionality following the addition or increased train movements over the Ashton Vale Road Level Crossing.</p>

<p>Requirement 19</p> <p>Temporary path south of Trinity Primary School, Portishead</p>	<p>Works to lay out the temporary path south of Trinity Primary School are to be approved in writing by the relevant planning authority prior to being carried out. The temporary path shall be constructed in accordance with the approved details and retained and available for use as provided for in requirement 19.</p> <p>The temporary path must be removed following the opening of the new footbridge.</p> <p>The requirement is included to provide that the path required by article 20(4) and (5) is provided in a form satisfactory to the relevant planning authority, whilst preserving some flexibility in the route of the path if needed for construction activities.</p>
<p>Requirement 20</p> <p>Path at Marsh Lane, Easton in Gordano</p>	<p>Details of the temporary path providing an alternative route for Bridleway LA8/66/10 at its junction with Marsh Lane, Easton in Gordano, are to be approved by the relevant planning before the path is provided and before the construction compounds close to the M5 Avonmouth Bridge are established. The path must then be retained until removed following cessation of works in this area.</p> <p>The obligation to remove the path is qualified by the inclusion of the words " unless otherwise agreed with the relevant planning authority in consultation with the relevant highway authority". These words are included as it may be concluded by the relevant authorities and landowner that the path would serve a useful purpose if retained on a permanent basis either as part of the highway of Marsh Lane of Bridleway LA8/66/10.</p> <p>The requirement is included to secure that the temporary path is provided before construction traffic activities in this location commence, as the temporary path is intended to reduce the conflict between that traffic and users of the bridleway.</p>
<p>Requirement 21</p> <p>Temporary Path at Avon Road, Pill</p>	<p>Details of the temporary path providing an alternative route for national cycle route 41 at Avon Road, Pill are to be approved by the relevant planning before the path is provided and before the construction compound at Avon Road, Pill is established. The path must then be retained until removed following cessation of works in this area.</p> <p>The requirement is included to secure that the temporary path is provided before construction activities in this location commence, as the temporary path is intended to replace the route that will be occupied by the temporary construction compound.</p>
<p>Requirement 22</p> <p>Restoration of land used temporarily for construction</p>	<p>Land used temporarily for construction is to be reinstated in accordance with details approved by the relevant planning authority. This does not apply to permanent geotechnical works installed within land used temporarily for the authorised development.</p>

<p>Requirement 23 Watercourses</p>	<p>Provides a process for approval of works within culverted watercourses passing under the disused railway. Approval from the relevant planning authority following consultation with the relevant flood authorities is required before works to culverts commence. Paragraph (3) requires the flow of water through the watercourses to be maintained unless otherwise permitted.</p> <p>The drafting is based on requirement 27 of the Rampion Offshore Windfarm Order 2014 (2014 SI No. 1873) but adapted to reflect the nature and content of the authorised development.</p>
<p>Requirement 24 For the protection of bats</p>	<p>Works No. 1, 1A, 1B and 1C must not commence until written details of the proposed tree planting on the A369 Portbury Hundred been approved in writing by the relevant planning authority. The details submitted for approval must accord with the Portbury Hundred location of additional tree planting plans (DCO Application Document Reference 2.57). The tree planting must be carried out in accordance with the approved details in the first planting season after the details have been approved by the relevant planning authority and maintained to the for five years following completion. Paragraphs (1)-(3) are included to provide for an alternative commuting route for bats when the railway becomes operational.</p> <p>Paragraphs (4) and (5) require that the authorised development must not commence in the Avon Gorge Woodlands SAC until artificial bat roosts and a grille preventing human access to a case in the Avon Gorge have been installed. This is to provide and protect bat roosts in the Avon Gorge whilst minor works are carried out to the existing freight line and in particular the tunnels in the Avon Gorge Woodlands SAC.</p>
<p>Requirement 25 Permanent Fencing outside of Avon Gorge Woodlands SAC</p>	<p>This stage must not be commenced until details for the permanent fencing proposed has been approved by the relevant planning authority and it must be installed in accordance with the approved details.</p> <p>Fencing at Work No. 26 must be of Palladin type.</p>
<p>Requirement 26 Permanent acoustic fencing</p>	<p>Work No. 1 and Work No. 1A must not commence until details of the proposed acoustic mitigation of the fences at Portishead Station and the Old Portbury Station have been approved by the relevant planning authority and must thereafter be carried out in accordance with the approved detail. A parameters approach has been taken regarding the length and height of the fences to meet the assessment in the Environmental Statement for the required noise mitigation and visual impacts of the new barriers.</p>
<p>Requirement 27 Portishead Station</p>	<p>Work No. 5 (Portishead Station) must not be commenced until details of the proposed GSM-R mast and permanent lighting for that work has been approved by the relevant planning authority and must be carried out in accordance with approved details. This requirement seeks to address the</p>

	<p>potential visual impact of artificial lighting and the required GSM-R mast.</p> <p><b>Proposals for the inclusion of on-site energy generation to be incorporated within the detail design for Portishead Station must be submitted to and approved by the relevant planning authority.</b></p>
<p>Requirement 28</p> <p>Operational lighting – Pill Station</p>	<p>Works to construct the new Pill Station (Work No 22) must not commence until written details of any permanent lighting are approved. The submitted details must demonstrate the lighting levels on the northern platform of the disused Pill Station will not impact on bat roosts and commuting routes on the northern disused platform.</p>
<p>Requirement 29</p> <p>Operational lighting – highways, bridges, paths and carparks</p>	<p>Details of highway, path and car park lighting must be approved by the relevant planning authority prior to commencement and thereafter installed in accordance with the approved details. This is to provide a mechanism for the relevant planning authority to control artificial lighting from those elements of the authorised development.</p>
<p>Requirement 30</p> <p>Works Affecting M5 Junction 19</p>	<p>This requirement is provided at the request of Highways England Company Limited to set up a Traffic Management Working Group (J19 TMWG) to deal with the Works in North Somerset, as these may be accessed via Junction 19 of the M5 Motorway. Given the proximity of the Junction to Bristol Port Company's Portbury Dock, the Port Company will also be invited to participate in the J19 TMWG.</p> <p>The J19 TMWG will receive and the relevant planning authority will be asked to approve a construction traffic management plan in respect of those works as they affect Junction 19 of the M5 ("J19 CTMP") and detailing matters such as construction traffic routing and the operation of compounds which will be the destination of the construction traffic using Junction 19 of the M5.</p> <p>The J19 CTMP will in particular seek to prevent construction staff from arriving between 730 am and 9 am Monday- Friday.</p>
<p>Requirement 31</p> <p>Clanage Road, Bristol</p>	<p>This requirement deals with the landscaping to be provided with the new maintenance compound at Clanage Road, in Bristol (Work No. 26).</p> <p><b>A flood plan detailing the emergency and evacuation procedures for use of the temporary and permanent compound must be submitted to the relevant planning authority in consultation with the Environment Agency, and, if relevant the lead local flood authority. The approved flood plan must thereafter be complied with to the satisfaction of the relevant planning authority.</b></p> <p>Landscaping is required for reducing visual impacts and also for the protection of wildlife.</p> <p>This requirement also deals with the regarding to be carried out in accordance with details forming part of the application and to be completed before the new railway opens for passenger traffic. The</p>

	regraded land must then be maintained.
Requirement 32 New bridleway east of M5 Avonmouth Bridge	This requirement is provided to allow the Undertaker to submit a more detailed design for the proposed bridleway (Work no. 18) between the termination point of Bridleway LA/67/10 under the M5 Avonmouth Bridge and the street forming part of NCN Route 41 connecting Pill with the M5 Avonmouth Bridge. The requirement allows the undertaker to submit full details of the proposed bridleway in accordance with the relevant design drawing, in accordance with the Bridleway Extension under the Elevated M5 Plan.
Requirement 33 Cattle Creep bridge, Easton in Gordano.	<b>Work No. 1B must not commence before a topographic survey is provided to the relevant planning authority and the Environment Agency setting out the existing ground levels at Cattle Creep Bridge.</b>  <b>Works to Cattle Creep Bridge must be carried out in accordance with the principles set out in the Cattle Creep Proposed General Arrangement drawing and in particular the arch of the Cattle Creep Underbridge must not be altered and the ground level must not be raised without the prior consent in writing of the relevant planning authority following consultation with the Environment Agency.</b>
Requirement 34 Requirement for written approval	Any approvals issued under the requirements must be in writing.
Requirement 35 Amendments to approved details	If an amendment is made to the authorised development then the requirements will apply as if those amendments were part of the authorised development.
Requirement 36 Anticipatory steps towards compliance with any requirement	This Requirement allows that steps taken in anticipation of the Order being made to be considered by the relevant planning authority as if they were made after the Order had come into force.
Requirement 37 Applications made under requirements	This provides a process for dealing with discharging requirements. It reflects in part the provisions of Advice Note 15 but also previous drafting of Made Orders. Discussion on the timetable for the process (and in particular timetable) for applications to discharge requirements commenced prior to the Advice Note being issued and the relevant planning authorities have indicated the extended time periods provided in the draft Order are to be preferred by the relevant planning authorities. If the relevant planning authority has not indicated its decision within eight weeks of submission then, as long as the detail is within the parameters of the Environmental Statement, the detail is deemed to have been approved. Sub-paragraph 4 states that if the details go outside of the Environmental Statement then the application is deemed to be refused.  Additional provisions to those outlined in Advice Note 15 are provided at

	<p>sub-paragraphs (2) and (3). These provide for a process for deeming consent if, at the end of the period for determination, no such determination has been provided by the relevant planning authority. Approval is deemed unless there would be materially new or worse environmental effects.</p> <p>This process has been agreed with the relevant planning authorities, but the relevant planning authorities asked for the provisions of paragraph (4) to also be included. Paragraph (4) requires that, before it may rely on any deeming provision, the Applicant provides notice to the relevant planning authority that the date for determination is approaching.</p> <p>It is also to be noted that the suggested drafting regarding fees is not included in the draft Order. The relevant planning authorities have indicated that they will seek planning performance agreements and in any event a less formal process for dealing with fees is preferred.</p>
Requirement 38 Further information	This Requirement allows the relevant planning authority to request further details within 20 business days of the submission of the application for discharge over the Requirement.
Requirement 39 Appeals	Advice Note 15 had been followed to provide an appeal mechanism for applications that are refused or deemed to be refused. References to discharging authority are amended to relevant planning authority.
Requirement 40 Interpretation of Schedule 2	Provides interpretation of definitions used in the schedule regarding requirements.
<b>Schedule 3</b>	<b>Streets subject to street works</b>
	This schedule lists the streets which are to be subject to the street works pursuant to article 13 (Street works and power to alter the layout etc. of streets).
<b>Schedule 4</b>	<b>Streets to be stopped up</b>
	<p>This schedule lists the streets which are to be permanently stopped up pursuant to article 14 (Permanent Stopping up of Streets).</p> <p>Part 1 lists the highways for which replacements are being provided and Part 2 lists the one street for which no replacement is being provided with reference to the Permanent and Temporary Stopping up and Diversion Plan (DCO Application Document Reference 2.30).</p>
<b>Schedule 5</b>	<b>Streets to be stopped up temporarily</b>
	This schedule lists the streets which are to be permanently stopped up pursuant to article 15 (Temporary stopping up of streets and public rights of way).

<b>Schedule 6</b>	<b>Bridleways, cycle tracks and footpaths</b>
	<p>This schedule lists the public rights of way to which Article 16 applies. Part 1 details the proposals for the diversion of the footpath at Barons Close Bristol (footpath BCC/422/10) away from the Barons Close or Ashton Containers level crossing to use the new access track provided as part of the Ashton Vale to Temple Meads dedicated bus route, crossing the railway on the Ashton Vale Road level crossing and returning to its original route via Winterstoke Road.</p> <p>Part 2 details the temporary closure of public rights of way as are shown on the on the permanent and temporary stopping up and diversion plan (DCO Application Document Reference 2.30).</p>
<b>Schedule 7</b>	<b>Access to works</b>
	<p>This schedule lists the new accesses from the highway proposed to enable construction of the authorised development, pursuant to article 17, as well as its operation and maintenance. The locations of the accesses are shown on the Access to Works Plan (DCO Application Document Reference 2.29).</p>
<b>Schedule 8</b>	<b>Closure of crossings</b>
	<p>This Schedule is referred to in article 20 and lists for closure the crossings over the railway that has been established at Quays Avenue and south of Trinity Primary School, Portishead, since the railway services ceased.</p> <p>The crossings are used by a wide section of the public. As a result the Order seeks to remove all public and private rights (if any) to use the crossings. A permanent replacement for both will be provided – the diverted Quays Avenue (Work No. 2) and the new cycle track bridge over the railway (Work No. 7). Part 2 of Schedule 8 allows for a temporary suspension of the Tansy Lane crossing whilst works to construct the new cycle track bridge are carried out that would prevent the use of the existing crossing.</p> <p>Part 3 of Schedule 8 deals with crossing for which no replacement facility is required.</p>
<b>Schedule 9</b>	<b>Accommodation and occupation crossings</b>
	<p>This Schedule is referred to in article 21 and lists the historic crossings over the Portishead Branch Line to be extinguished by the Order. Part 1 refers to two crossings at Shipway Gate Farm and one at Elm Tree Farm Portbury, for which new accommodation works will be provided.</p> <p>Part 2 lists the historic crossings and for which no alternative is proposed to be provided.</p>
<b>Schedule 10</b>	<b>Land in which only new rights, etc. may be required</b>

	This Schedule is referred to in article 27 (Compulsory acquisition of rights or imposition of covenants) and lists the parcels of land over which only new rights may be created.
<b>Schedule 11</b>	<b>Modification of compensation and compulsory purchase enactments for creation of new rights or imposition of restrictions</b>
	This Schedule modifies provisions for compensation following the creation of new rights.
<b>Schedule 12</b>	<b>Land of which temporary possession may be taken</b>
	This Schedule sets out the land of which temporary possession may be taken pursuant to article 33 (Temporary use of land for carrying out the authorised development).
<b>Schedule 13</b>	<b>Hedgerow</b>
	This Schedule details the hedgerows within the Order limits which may be removed pursuant to Article 44 (Hedgerows).
<b>Schedule 14</b>	<b>Traffic Regulation</b>
	This Schedule details the permanent traffic regulation powers sought within the Order limits pursuant to Article 46 (traffic regulation).
<b>Schedule 15</b>	<b>Amendment of Local legislation</b>
	Article 54 refers to this schedule which lists for disapplication the North Somerset Levels Internal Drainage Board Land Drainage Byelaws 2004.
<b>Schedule 16</b>	<b>Protective Provisions</b>
	<p>This Schedule is referred to in Article 53 and includes provisions to protect the interests of various bodies whose assets may be affected by the DCO Scheme. Further information is provided in Appendix 3 to this memorandum. The Parts of Schedule 16 comprise:</p> <p><b>Part 1 - Network Rail Infrastructure Limited</b></p> <p>The protective provisions included in the draft Order are based on Network Rail's standard provisions with some minor amendments.</p> <p>The protective provisions have been provided by Network Rail and are agreed.</p> <p><b>Part 2 - Electricity, Gas, Water, Petroleum and Sewerage Undertakers</b></p> <p>These provisions are based on standard provisions for such operators used in other railway Orders.</p> <p><b>Part 3 - Electronic Communications Code Network Operators</b></p> <p>These provisions are based on standard provisions for such operators used</p>



	<p>in other railway Orders. There current discussions with operators in respect of the extent to which existing apparatus may be affected by the DCO Scheme.</p> <p><b>Part 4 - Environment Agency</b></p> <p>The protective provisions included in the draft Order are based on the Environment Agency’s (EA) previous standard provisions with some minor amendments. This Part has been commented on by EA and revised protective provisions have been provided by the Environment Agency for the Applicant to consider. This Part of Schedule 16 will therefore be the subject of further discussions with EA. The current form of this Part is not agreed.</p> <p><b>Part 5 - Bristol Port Company</b></p> <p>Protective provisions for the benefit of Bristol Port Company are drawn from the National Grid (Hinkley Point C Connection Project) Order 2016, but adapted to reflect the specific considerations applying to the draft Order. In particular, the Port's use of Network Rail's land to access its car park at Court House Farm on the south side of the disused railway is excluded from the benefit of the Protective Provisions. An agreement between the Port and Network Rail granting a right to cross the disused railway was entered into in contemplation of the DCO Scheme proceeding. Part 5 of Schedule 16 is not in agreed form.</p> <p><b>Part 6 - CLH Pipelines</b></p> <p>Protective provisions for the benefit of CLH Pipelines Systems Limited are included in the draft Order. These are drawn from the National Grid (Hinkley Point C Connection Project) Order 2016 (2016 SI No. 49), but adapted to reflect the specific considerations applying to the draft Order. Part 6 of Schedule 16 is not in agreed form. Negotiations are ongoing.</p> <p><b>Part 7 - Western Power Distribution Limited (South West) PLC</b></p> <p>Protective provisions for the benefit of Western Power Distribution Limited (South West) PLC (WPD) are based on WPD's supplied standard provisions. Part 7 of Schedule 16 is not in agreed form. Negotiations are ongoing.</p>
<b>Schedule 17</b>	<b>Documents to be Certified</b>
	<p>This schedule lists the documents that are intended to be certified by the Secretary of State as documents of record, pursuant to article 55 (Documents to be certified). The list is currently incomplete and will be finalised towards the close of examination.</p>

## APPENDIX 1

Table A1 below describes the precedents followed in the preparation of the draft Order. Reference to the Model Provisions is reference to Schedule 2 of The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (2009 SI No 2265) (the **Model Provisions**), which provides model provisions for railways. How the draft Order provision reflects the Model Provisions is explained in column 2.

Where precedent has been taken from more recent Orders made by the Secretary of state the article and title of the relevant Order is given in column 3 of the table.

Where drafting has been adapted from the precedent article of the Model Provisions or the precedent Order this is explained in column 4.

Where drafting has been prepared to fit the circumstances and nature of the DCO Scheme the rationale for this is explained in column 5.

**Table A1: Precedents followed in the preparation of the draft Order**

<b>(1) Article in draft Order</b>	<b>(2) Identical to Model Provision?</b>	<b>(3) Precedents in other Orders</b>	<b>(4) Differences from Model Provisions or precedent Order</b>	<b>(5) Rationale</b>
1. Citation and commencement	No	Numerous – See for instance article 1 of the Silvertown Tunnel Order 2018 (SI 2018/574)	No similar article in Model Provisions	Provides detail for citation and clarity regarding coming in to force.

2. Interpretation	Model Provision 1 adapted to reflect the drafting of the Draft Order and circumstances of the DCO Scheme	-	Numerous provisions in the draft Order require the definition of terms not used in the Model Provisions.	The draft Order includes those definitions included in Model Provision (1) which are relevant to the draft Order, plus those relevant to the DCO Scheme. The definition of Commence is drawn from The Northampton Gateway Rail Freight Interchange Order 2019 but extended to reflect the practice in similar orders to exclude certain activities from amounting to commencement.
3. Incorporation of the Railway Clauses Acts	Model Provision 2	Also included, for instance in the Network Rail (Redditch Branch Enhancement) Order 2013 (2013 SI No. 2809).	-	Required for the proper application of the Railway Clauses Acts.
4. Application and modification of legislation	No	This is adapted from article 3 of the Silvertown Tunnel Order 2018 (2018 SI No. 574), save for article 4(3) which follows the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018	Further legislative provisions, not relevant to this draft Order, were disappplied or modified by the Silvertown Tunnel Order.	The draft Order seeks to disapply the Community Infrastructure Regulations 2010 (SI.2010/948). Clarity is also sought relating to the temporary possession provisions not yet in force, in the Neighbourhood Planning Act 2017 (2017 c.20)
5. Development consent etc. granted by the	Model Provision 4 adapted to reflect the drafting and circumstances	-	No reference to ancillary works	Adapted to fit the Order drafting

Order				
6. Planning permission	No	This is adapted from article 7 of the M20 Junction 10a Development Consent Order 2017 (2017 SI No. 1202)	Article 6 (2) added	Article 6(2) added to reflect that the existing freight line already benefits from permitted development rights and that the whole of the Portishead Branch Line will benefit from such rights once operational.
7. Limits of deviation	No	This is adapted from article 5 of the Silvertown Tunnel Order 2018 (2018 SI No. 574)	Adapted to remove the references to tunnelling under the River Thames and to reflect parameters suitable for the authorised development.	Drafting reduced to reflect the parameters required for linear and non-linear works proposed.
8. Maintenance of authorised development	Model Provision 5 adapted	-	Article 8 (2) included in addition to Model Provisions	Adapted to reflect changes to Environmental Assessment regulations and practice subsequent to the Model Provisions being made.
9. Benefit of Order	Model Provision 7 adapted	-	-	Model Provision 7 adapted by the inclusion of drafting specific to the circumstances of the application.
10. Consent to transfer benefit of Order	Model Provision 8 adapted	-	Paragraphs (1) – (3) follow the Model Provisions. Paragraphs (4) and (5) are added to reflect the provisions of article 11	Paragraph (4) is included to make it clear that the consent of the Secretary of State is not required for a transfer of powers to Network Rail.

11. Agreements with Network Rail	No	The draft is similar (but not identical) to Article 44 of The Chiltern Railways (Bicester To Oxford Improvements) Order 2012 (2012 SI.2679)	There is no Model Provision for this topic.	The changes from The Chiltern Railways (Bicester To Oxford Improvements) Order 2012 are made to reflect references to the Undertaker in the draft Order.
12. Application of the 1991 Act	No	This Article is adapted from 7 of the Silvertown Tunnel Order 2018 (2018 SI No. 574).	References to Transport for London (TfL) are replaced by references to the undertaker.	The changes are made to reflect references to the Undertaker in the draft Order.
13. Street works and power to alter the layout etc. of streets	Model Provision 9 adapted	Article 9 of the Network Rail (Ordsall Chord) Order (2015 SI No. 780) relating to the power to alter layouts etc. within streets	This article is drafted partially based on Model Provision 9 but also includes provisions taken from Article 9 of the Network Rail (Ordsall Chord) Order 2015	The additional wording (which has precedence) is included to provide the undertaker with the ability to alter existing streets required for the highways elements of the associated development.
14. Permanent Stopping up of Streets	Model Provision 11 adapted	-	This article is drafted partially on Model Provision 11	The drafting of this article largely reflects that of the Model Provisions. The streets that are to be permanently stopped up are included in Schedule 4.
15. Temporary stopping up of streets and public rights of way	No	the National Grid (Hinkley Point C Connection Project) Order 2016 (2016 SI No. 49), article 13, has been adapted	-	This article permits the temporary stopping up of streets where necessary to facilitate the delivery of the DCO Scheme.
16.	In part	-	This article is based	Paragraphs (1) and (2) of this article

Bridleways, cycle tracks and footpaths			partially on Model Provision 13	follow the Model Provisions. Paragraph (3) is added to provide the power to temporarily stop up public rights of way.
17. Access to works	In part	-	This article is drafted partially in conformity with Model Provision 15	This article is included to allow for modification of the access, or other means of access to be provided. The modification from the Model Provisions is to include reference to the compounds, haul roads and access to works plan.
18. Agreements with street authorities	In part	-	This article is drafted in partial conformity with Model Provision 16	This article is included to allow the Applicant to enter into agreements with the relevant highway authority relating to the construction of a new street, carrying out of works in the street, stopping up, alteration or diversion of streets and maintenance of the structure of any bridge or tunnel carrying a street over or under a railway prior to the works commencing. Article 18 (1)(e) is an additional provision.
19. Construction and maintenance of new or altered streets	In part	-	This article is drafted partially in conformity with Model Provision 10	This article is included to regulate the relationship between Applicant and the street authority regarding the construction and maintenance of new streets. All new or altered streets within order lands are or will become the responsibility of the Council as

				local highway authority and as a result those part of Model Provision 10 relating to claims have been removed. References in the Model Provisions to prospectively maintainable streets in the 1991 Act are also not relevant.
20. Closure of level crossings and crossings over disused railway	No	Similar to provisions relating to level crossings in other Orders such as the Network Rail (Norton Bridge Area Improvements) Order 2014 (2014 SI No. 909)	-	This article is based on similar provisions relating to level crossings in other Orders such as the Network Rail (Norton Bridge Area Improvements) Order 2014 (2014 SI No. 909) but is substantially adapted to suit the unusual circumstances of the crossings in Portishead to which the provisions of this article and Schedule 8 relate. The additional provision of a temporary power to divert the existing crossing at Trinity Primary School is also required as it is not possible to keep open the existing route of the level crossing there whilst safely constructing the new cycle track bridge above.
21. Accommodation and occupation crossings	No	The drafting is adapted from a number of Transport and Works Act orders with similar provisions	There is no model provision for this topic	This article is based on but adapted from article 17 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (2012 SI No. 2679). Changes include the reference to the relevant authorising Acts and also to reflect that for the Portishead Branch Line many of the

				historic crossings may be extinguished without replacement. Paragraph (3) of article 21 therefore allows for extinguishment of such historic rights on the date the Order comes in to force.
22. Discharge of water	In part	-	This article is based partially on Model Provision 20	This article has been modified to update references to the Environmental Permitting (England and Wales) Regulations 2016 (2016 SI No. 1154).
23. Authority to survey and investigate land	In part	-	This article is drafted partially based on Model Provision 22 but with modern drafting adopted	This article makes provision in relation to the payment of compensation and the notice period that must be given to owners and occupiers of land ahead of any surveys. Modern drafting is adopted.
24. Compulsory acquisition of land	In part	-	This article is based partially on Model Provision 24	This article is amended to reflect the drafting of the Order in terms of Article cross-referencing. It is also amended by the removal of paragraphs (2) and (3) of Model Provision 24, which are provided for elsewhere in the draft Order.
25. Modification of Part 1 of the 1965 Act	No	The drafting is adapted from a number of orders with similar provisions	No similar model provision	The wording of this article is based on, and adapted from, the Silvertown Tunnel Order (2018) SI No. 574, Article 25. Amendments relating to the specific drafting of this Order have



				been made.
26. Time limit for exercise of authority to acquire land compulsorily or take land temporarily	In part	-	Model Provision 26 adapted to fit the provisions of the Order	The drafting of this article is based substantially on Model Provision 26. It is adapted only to reflect the specific wording of the Order in respect of cross-references to other Articles.
27. Compulsory acquisition of rights and imposition of covenants	No	The drafting is adapted from a number of orders with similar provisions	-	This approach can be found in Article 19 of the Network Rail (Nuneaton North Chord Order) 2010 (2010 SI No. 1721) and Schedule 6 to the Crossrail Act 2008 (2008 c. 18). It was also accepted in the East Anglia THREE Offshore Wind Farm Order 2017 (2017 SI No. 826). It has been further adjusted to also allow covenants to be imposed for ecological mitigation purposes.
28. Private rights over land subject to compulsory acquisition or temporary possession	In part	The drafting is adapted from a number of orders with similar provisions	-	The Model Provisions are substantially adjusted so as to apply the article to both land and rights acquired pursuant to the Order.  Paragraphs 6 and 7 allow the Applicant to provide notice allowing the Applicant to confirm to the relevant owner of a dominant tenement that the rights that would by operation of this Article be extinguished or overridden are not so

				extinguished or overridden.
29. Power to override easements and other rights	No	The drafting is adapted from a number of orders with similar provisions, principally article 29 of the Silvertown Tunnel Order 2018 (SI 2018/574).	The drafting is amended to reflect the Applicant and Network Rail already own the majority of the Order land.	<p>This article allows the Applicant to carry out the authorised activities even if the activities may breach existing contracts affecting those parts of the Order land already held by Network Rail or the Applicant.</p> <p>The provision is required as the whole of the operational railway land forming the NSIP is already in the ownership of the applicant or Network Rail but is subject to rights over land that are incompatible with the proposed use of the land. This means a power akin to an appropriation power is required to permit the development and use of the NSIP.</p>
30. Application of Compulsory Purchase (Vesting Declarations) Act 1981	In part	-	This article is based partially on Model Provision 29	This article gives the Applicant the option to acquire land by this method rather than through the notice to treat procedure. It is based on the model provisions and has been updated to reflect the changes brought about by the Housing and Planning Act 2016 (2016 c. 22).
31. Acquisition of subsoil or airspace only	In part		This article is drafted partially based on the Model Provision 30	This article allows the applicant the ability to acquire subsoil or airspace only. It is largely based on the model provisions but has been extended to include airspace. The

				<p>article is also updated to reflect amendments to the compulsory purchase legislation subsequent to the model provisions (principally those in the Neighbourhood Planning Act 2017) (2017 c.20).</p> <p>The amendments are taken from Article 27 of the Silvertown Tunnel Order 2018 (SI 2018/574). That Order is not followed in full, as the circumstances of the two Orders are substantially different.</p>
32. Rights under or over streets	Yes - Model Provision 34	-	-	-
33. Temporary use of land for carrying out the authorised development	No	The drafting is adapted from a number of orders with similar provisions	This article is drafted partially on Model Provision 35	This drafting follows a number of DCOs, and the Network Rail (Ordsall Chord) Order 2015 (2015 SI No. 780). It is also adapted to reflect the specific circumstances of the proposed works and in particular the intention to install permanent ground strengthening works on land that will be subject to temporary possession powers. The ability to impose restrictive covenants in Order land pursuant to article 27 is also reflected in the drafting.
34. Temporary use of land for maintaining	In part	The drafting is adapted from a number of orders with similar provisions	This article is drafted partially on Model Provision 29	This is based on, but modifies, the Model Provisions. This drafting follows a number of DCOs, and the Network

the authorised development				Rail (Ordsall Chord) Order 2015 (2015 SI No. 780).
35. Disregard of certain interests and improvements	No	The drafting is adapted from a number of orders with similar provisions, principally article 36 of the Silvertown Tunnel Order 2018 (SI 2018/574)	No similar provision in Model Provisions	The article is commonly found in similar orders and clarifies the position regarding activities carried out with a view to enhancing compensation as is found in section 4 of the Acquisition of Land Act 1981 (1981 c. 67). The wording of Article 36 of the Silvertown Tunnel Order 2018 has been adopted.
36. Set-off for enhancement in value of retained land	No	The drafting is adapted from a number of Orders with similar provisions, principally article 37 of the Silvertown Tunnel Order 2018 (SI 2018/574)	No similar provision in Model Provisions	This article is found in similar Orders and clarifies that betterment provisions would apply for the assessment of compensation. The drafting of the Silvertown Tunnel Order has been adapted with modifications only reflecting appropriate cross-referencing in the Order.
37. Statutory undertakers and electronic communications code network operators	No	This drafting is adapted from a number of Orders with similar provisions, principally article 31 of the Silvertown Tunnel Order 2018 (SI 2018/574)	This article is partly based on Model Provision 38	This article is partly based on Model Provision 38 which has been modified in accordance with the approach taken on a number of development consent orders. The wording of article 31 of the Silvertown Tunnel Order 2018 has been adapted.
38. Recovery of costs of new connections	In part	-	This article is partly based on Model Provision 40	This article is largely based on Model Provision 40. Paragraph (3) of the Model Provision has not been included on the basis that the cross-references in that paragraph have not

				been incorporated.
39. Operation and use of railways	In part	Yes – see Network Rail (Redditch Branch Enhancement) Order 2013(2013 SI No. 2809)	This article is largely based on Model Provision 41	The article follows Model Provision 41 but makes reference to Network Rail as the person with authority to operate the railway rather than the Applicant, so as to reflect the provisions of the current Order.
40. Operational land for purposes of the 1990 Act	In part	Yes – see Network Rail (Redditch Branch Enhancement) Order 2013 (2013 SI No. 2809)	Model Provision 48 has been adapted.	This article declares that land within the Order Limits utilised for the highway works shall be treated as operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990 (1990 c. 8).  Model Provision 80 has been followed.
41. No double recovery	No	Yes – see Network Rail (Redditch Branch Enhancement) Order 2013 (2013 SI No. 2809)	No similar provision in Model Provisions	Standard wording found in a number of similar Orders, including Network Rail (Redditch Branch Enhancement) Order 2013, has been adopted.
42. Apparatus and rights of statutory undertakers in stopped up streets	In part	-	This article is drafted following Model Provision 39	This article is based on the Model Provisions but modifies Model Provision 39 only to reflect the appropriate cross referencing in the draft Order.
43. Felling or lopping of	In part	-	This article is drafted following Model	This article is needed to prevent trees, shrubs or hedgerows obstructing

trees			<p>Provision 45.</p> <p>The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (2014 SI no. 2384) article 27</p>	<p>construction, maintenance or operation of the DCO Scheme. It is largely based on Model Provision 45 but is adapted to clarify the relationship between this power and the control over felling of trees within the Avon Gorge Woodlands Special Area of Conservation.</p> <p>The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (2014 SI no. 2384) article 27 used in part. Because it is difficult to identify the individual trees in the Avon Gorge, reference to a plan has been removed.</p>
44. Important Hedgerows	No	Similar, but not identical, wording appears in the Rampion Offshore Wind Farm Order 2014 (2014 SI No. 1873), at Article 37	<p>No similar provision in Model Provisions</p> <p>The A30 Chiverton to Carland Cross Development Consent Order 2020 (2020 SI no. 121) Article 39 referred to as a precedent but adapted.</p>	<p>For the important hedgerow, drafting has followed article 37 of the Rampion Offshore Wind Farm Order 2014, save for it being adapted to fit the particular circumstances of the application and without reference to the National Park relevant in the Rampion Order. The provisions are required to allow for the removal of an important hedgerow at Lodway Farm, Easton in Gordano. This removal has been assessed in the Applicant's Environmental Statement.</p>
45. Defence to	In part	-	This article is drafted following Model	This article is based on the Model Provisions

proceedings in respect of statutory nuisance			Provision 49	
46. Traffic regulation	No	The article is based on Article 61 of the Silvertown Tunnel Order 2018 (SI 2018/574).	No similar provision in the Model Provisions	This article has been adapted from Article 61 of the Silvertown Tunnel Order 2018. It has been reduced in scope to reflect the lesser requirements and reduce need for traffic regulation in the current application.
47. Application of the Land Compensation Act 1973	Yes	-	The article is drafted following Model provision 33	Model Provision 33 is followed in full.
48. Application of landlord and tenant law	Yes	-	The drafting follows article 47 of the Model Provisions	Model Provision 47 is followed in full.
49. Procedure in relation to further approvals, etc.	No	A similar approach was followed on the Hinkley Point C (Nuclear Generating Station) Order 2013 (2013 SI No. 648).	No similar provision in Model Provisions	This article provides a mechanism for securing any consent or approval from a consenting body required by the provisions of the Order. A similar approach was followed on the Hinkley Point C (Nuclear Generating Station) Order 2013.
50.	No	The drafting is adapted from a number of orders with	No similar provision in Model Provisions	This article is drawn from article 67 of the Silvertown Tunnel Order 2018.

Service of notices		similar provisions		
51. Crown rights	No	Yes – several including the National Grid (Hinkley Point C Connection Project) Order 2016 (2016 SI No. 49)	This article is drafted based on the National Grid (Hinkley Point C Connection Project) Order 2016	Paragraphs (1) and (3) are drawn from the National Grid (Hinkley Point C Connection Project) Order 2016.  Paragraph (2) has been inserted to clarify that the provisions of the article do not apply to interests in Crown land held otherwise than on behalf of the Crown.
52. Amendment of local byelaws	No	the National Grid (Hinkley Point C Connection Project Order 2016 (2016 SI No. 49)	This article is drafted based on the National Grid (Hinkley Point C Connection Project Order 2016	The North Somerset Levels Internal Drainage Board byelaws need to be disapplied to allow the undertaker and Network rail to carry out works in the vicinity of watercourses monitored by the IDB. As both the Council and Network Rail are themselves statutory bodies, the application of the byelaws is unnecessary in the context of two authorised works.
53. Protective provisions	No	The drafting is adapted from a number of orders with similar provisions	This article is drafted following Model Provision 50	Model Provision 50 has largely been followed. The title of the Article has been changed from "protections of interest" to "protective provisions" and the drafting of the article amended to reflect the cross-referencing in the Order.
54.	No	The drafting is adapted from a number of orders with	No similar Model Provision. The drafting is adapted	The drafting is largely based on Article 34 of the Silvertown Tunnel Order 2018(SI 2018/574) . Article 34



Special category land		similar provisions	from a number of special category land that has been the subject of the compulsory acquisition.	of the Silvertown Tunnel Order 2018 has largely been followed but adapted to reflect the detail of the land subject to special category status and also to reflect cross-referencing in the Order.
55. Documents to be Certified	No	The drafting is adapted from a number of orders with similar provisions	Similar drafting is in article 65 of the Silvertown Tunnel Order 2018 (SI 2018/574), reflecting an updated approach to certification to the model provision	The drafting is based on amended only to reflect references to the undertaker rather than Transport for London.
56. Arbitration	In part	-	The wording is based on, but amended from Model Provision 52.	Model Provision 52 has been adapted to firstly make it clear that the article applies subject to agreement between the relevant parties or as otherwise provided for in the Order. It is also amended to reflect that the appropriate body to decide the identity of an arbitrator is the President of the Institution of Civil Engineers from time to time.

## **APPENDIX 2**

### **Separation of Functions Document**

#### **Portishead Branch Line (MetroWest Phase 1)**

##### **Division of Roles & Responsibilities**

**Updated Version: May 2019**

## **19. INTRODUCTION**

19.1 The Portishead branch line re-opening (the DCO Scheme) is part of the wider MetroWest Phase 1 Project. MetroWest Phase 1 includes

19.1.1 re-opening the Portishead branch line for passenger train services, with new stations at Portishead and Pill;

19.1.2 upgrading the passenger train service for the Severn Beach Line; and

19.1.3 Improvements to the passenger train service on the Bath Spa to Bristol Temple Meads line.

A 5km section of the Portishead branch line is disused. The proposal to re-open the line would require consent under the Planning Act 2008 as a Nationally Significant Infrastructure Project (NSIP). NSIPs are consented by the Secretary of State through the Development Consent Order (DCO) process managed by the Planning Inspectorate.

19.2 The application for powers in the DCO will also include provision for works to the existing operational freight line from Royal Portbury Dock to Ashton Junction in Bristol (next to Imperial Tobacco's HQ) – the Portbury Freight Line. Associated works to the highway network, principally at Ashton Vale to form a new access to the industrial estate and at the new Portishead station are also proposed. These are also included in the DCO Scheme, as associated development.

- 19.3 In addition to the infrastructure proposed to be authorised by the DCO various minor works are required within the existing operational railway to deliver the rest of the Project, including but not limited to works at Bathampton, Avonmouth/Severn Beach, Bedminster and Parson Street Junction. These works are to be taken forward using Network Rail's general permitted development rights and are not part of the DCO Scheme.
- 19.4 MetroWest Phase 1 is being promoted by the West of England Combined Authority (WECA), on behalf of its three constituent unitary councils (Bath & North East Somerset, Bristol City, and South Gloucestershire Councils) together with North Somerset District Council – the MetroWest Authorities.
- 19.5 The part of MetroWest Phase 1 that requires a DCO falls mainly within the local government boundary of North Somerset District Council. A small section is within the administrative area of Bristol City Council, in the Ashton and Bower Ashton areas of the City.
- 19.6 Both North Somerset District Council and Bristol City Councils are "section 43(1) authorities" (S43 Planning Act 2008) as well as promoters of MetroWest Phase 1. As neighbouring authorities, Bath and North East Somerset and South Gloucestershire District Councils are "S43 (2) authorities", as authorities bordering the areas within which the DCO Scheme will be constructed, as well as MetroWest Phase 1 promoters.
- 19.7 All four local authorities and WECA will be invited by the Examining Authority (ExA) - the inspector(s) appointed by the Planning Inspectorate on behalf of the Secretary of State who will examine the Application - to submit a Local Impact Report during the examination of the proposed DCO, to inform the ExA of the likely impacts of the MetroWest Phase 1 Project on their areas.
- 19.8 This means all four Councils and WECA have key roles as
- 19.8.1 pre application consultees;
  - 19.8.2 commenting on adequacy of consultation; and
  - 19.8.3 providing support to the ExA during examination, in particular (but by no means only in) providing Local Impact Reports to assist the EA in evaluating the impacts of the DCO Scheme on local interests.
- 19.9 In addition the host local authorities – North Somerset District Council and Bristol City Council, have roles as
- 19.9.1 local planning authority
  - 19.9.2 Highway and traffic authority
  - 19.9.3 Lead local flood authority
- which must be kept separate from their roles in promoting the DCO Scheme.
- 19.10 The fact the Councils are also promoting the DCO Scheme needs to be recognised and procedures put in place to ensure the statutory roles of the Councils as

(i) formal consultees; and

(ii) in assisting the ExA

are clearly demarcated.

- 19.11 Local authorities are familiar with having to deal with a separation of roles and responsibilities but it must be made clear to all engaged in the process the statutory role they are fulfilling.
- 19.12 It is also important to consider the role of external consultants and the potential for an organisation performing roles for both the Council as promoter and as regulatory authority. Where such situations exist, the consultant firm should be asked to provide separate teams for the different parts of the authorities and reminded of the need for that team to advise in the role appropriate to their instructions and without influence arising from the consultant firm being instructed by another part of the Council. An individual should not advise both sides of the Council in the process.
- 19.13 It is anticipated the Application for the DCO Scheme will be submitted in July 2019. The main construction phase is planned to commence in 2021 with completion 2023.

## **20. PURPOSE OF THIS DOCUMENT**

- 20.1 This document has been prepared to set out clearly the roles and responsibilities for the staff at the four MetroWest Authorities dealing with MetroWest Phase 1. Tasks for the MetroWest Authorities as promoters of the DCO Scheme include the production of Environmental Impact Assessment (EIA) and preparation of a Consultation Report. Previous versions have been issued to the local authorities at key pre application stages.
- 20.2 This document is intended to show how the processes and functions of the MetroWest Authorities will be separated to allow for the appropriate consideration by the relevant officers of the MetroWest Authorities. It also deals with the requirements on Members to consider the function within which they are operating.
- 20.3 The MetroWest Authorities should seek to adhere to the principle that no staff member working on the DCO Scheme will contribute to any consultation responses in relation to the statutory and regulatory functions of the MetroWest Authorities including responses to the either the EIA or processes relating to the DCO.
- 20.4 **It is important to ensure there is a clear separation of roles within the MetroWest Authorities such that the staff leading on MetroWest Phase 1 are separated from staff leading on statutory and regulatory functions.**
- 20.5 It is also important that this separation is maintained for the duration of the development of MetroWest Phase 1, through to construction and opening, including the stages of the DCO process where authority staff will be involved in Local Impact Reports, Responses to ExA Questions and attendance at Hearings.

- 20.6 This document therefore sets out the different roles of officers to explain how a separation of roles and functions should be built in to the processes for dealing with the DCO Scheme. Where Members will have to fulfil a role in the process, this is also briefly described.
- 20.7 Figure 1 sets out an overview of the MetroWest Phase 1 project governance.

## 21. GLOSSARY OF TERMS

A Glossary of Terms is provided to assist with some of the DCO related terms used in this document:

1. *Adequacy of Consultation Representation*: a report on the Applicant's pre application consultation provided by the relevant local authorities to assist the Planning inspectorate in determining if pre application consultation was carried out appropriately.
2. *Applicant*: North Somerset District Council on behalf of the MetroWest Authorities
3. *Application*: the application for a DCO to authorize the re-opening of the Portishead Railway
4. *Development Consent Order (DCO)*: an Order made under the Planning Act 2008 authorising NSIPs
5. *Examination*: the process by which the ExA consider the Application
6. *Local Impact Report (LIR)*: a report submitted by the relevant local authority during the Examination, setting out that authority's views of the likely impact of the Scheme on its administrative area
7. *MetroWest Authorities*: WECA on behalf of Bath and North East Somerset Council, Bristol City Council, and South Gloucestershire District Council together with North Somerset District Council
8. *Portishead Railway*: The existing freight line from Parson Street Junction to Portbury Dock Junction and the re-opened railway from Portbury Dock Junction to Portishead
9. *PROW*: public rights of way
10. *Secretary of State*: The Secretary of State for Transport, who will decide on the Application.

## 22. NORTH SOMERSET DISTRICT COUNCIL – SUMMARY OF ROLES – PROMOTING THE DCO

### 22.1 Development Consent Order Promotion and Application

#### 22.1.1 Overview

The DCO is being drafted by a team at Womble Bond Dickinson LLP Solicitors, instructed by the MetroWest authorities. They receive their instructions from James Wilcock, the MetroWest Phase1 Project Manager.

#### 22.1.2 NSDC Staff roles – Applying for Development Consent Order

Leading the application process, attending key meetings with PINS and Stakeholders, briefing members, liaising with Network Rail, controlling budgets, leading on key decisions, overseeing the project design and all technical workstreams, overseeing land assembly, approving document production, providing evidence at hearings and administering the Application process.

The staff at NSDC progressing the Application, and responsible for undertaking the above activities include:

- (i) James Willcock
- (ii) Jenny Devereux
- (iii) Richard Matthews
- (iv) Steve Penaluna

Their roles are:

- (a) Promoting the DCO – leading on the process for consultation, preparing the Application and providing evidence at the Examination.
- (b) Environmental Impact Assessment (EIA) - NSDC staff will provide instructions, attend meetings and integrate the EIA consultants' work with the other workstreams, NSDC staff will attend key meetings and decide on what mitigation measures can be offered in the Environmental Statement.
- (c) Habitats Regulations - procuring reports to inform the competent authority and Natural England on the impacts of the DCO Scheme.
- (d) Consultation Requirements – ensuring the statutory consultation requirements are complied with and evidenced.
- (e) Responding to Local Impact Reports (LIR) – the promoting team will need to consider and respond to LIR.
- (f) Land - the promoting team will provide instructions on negotiations with landowners and decide the terms for acquisition.
- (g) Highway, Public Rights of Way and Traffic issues - the promoting team will commission the design of new highways and accesses and decide on the proposed impacts on public rights of way to be sought in the DCO.

### 22.1.3 *Role of Members – Development Consent Order promotion*

#### (a) *Key decisions on the Application*

Members will need to approve expenditure for the promotion of the Application. Members will also have to resolve that the Application should be made, having first considered the human rights and equalities impacts of the proposed Order.

The relevant report is to be considered by Full Council.

If the Application is successful, Members will also be asked for final approval for the Project to commence, upon the full business case being worked up.

*(b) Land*

It is possible land acquisitions may be outside of the delegation to officers and member approval may be needed.

Members may also need to consider the appropriation of land held by NSDC but required for the MetroWest Phase 1 Project.

**23. CONSIDERING THE PROPOSED DCO – THE ROLE OF THE METROWEST AUTHORITIES AS SECTION 43 AUTHORITIES**

*23.1 The DCO – general*

Officers in their capacity of carrying out development management and regulatory functions in will need to consider key aspects of the DCO such as requirements and highways provisions. Specialist officers will also need to consider elements of the evidence supporting the DCO and be engaged in pre- and post-application consultations.

*23.2 Environmental Impact Assessment (EIA)*

The EIA process is iterative and officers will be consulted by the promoting team for the Application on the impacts of the DCO Scheme on the environment. This will be during the consultation stages. At examination officers responsible for EIA response may be asked to inform the ExA on their views of the findings in the Environmental Assessment.

The Council's specialist staff on particular issues will be called on by the Applicant and if necessary the ExA. If external consultants are used they should also be separate from the Applicant's external team.

*23.3 Consideration of Habitats Regulations Applications*

23.3.1 Depending on the processes followed by the promoter, it is possible that the Council may find itself the competent authority for considering Habitats Regulations applications – this would apply if Network Rail seeks to take works forward under permitted development rights. However it is likely that the role of the Council will be to provide advice to both the Applicant but also the Secretary of State in considering any Habitats Regulations assessment required as a result of matters being included in the DCO application.

*23.3.2 Staff - Habitats Regulations*

The staff at NSDC specialist in their various areas will be called on to assist the promoter and if necessary the ExA at examination. Officers separate from the team promoting the Project must undertake this role.

#### 23.4 *Consultation obligations*

23.4.1 The Councils will be invited by the Planning Inspectorate to consider the adequacy of pre-application consultation undertaken by the Applicant. This will occur during the month during which acceptance is resolved upon by the Planning Inspectorate. An Adequacy of Consultation representation will be requested by the Planning Inspectorate during this time.

23.4.2 It is essential that the officers responding are not in any way involved in the promotion of the Application.

#### 23.5 *Local Impact Report – Preparation*

As with the Adequacy of Consultation report, it is essential that the Local Impact Report is prepared by officers who have not been involved in the promotion of the application for the DCO. The Council's economic development, planning and highways officers will be required to give their views on the anticipated local impacts, whether positive, negative or neutral.

#### 23.6 *Highways*

23.6.1 The Order will seek powers for a number of highway works including diversion of Quays Avenue, the creation of new private means of access and the stopping up (either with or without replacement) of certain public rights of way over the railway.

23.6.2 North Somerset District Council as highway authority needs to consider any application proposals and their impacts on the highway as if the plans were being submitted by a developer. The same applies to Bristol City Council for its administrative area. The Council's highways and public rights of way officers may also be asked to provide evidence in examination.

23.6.3 The Case Officer for the Council is Colin Chandler.

#### 5.7 *Planning*

5.7.1 North Somerset District Council as local planning authority needs to consider any of application's proposals for development consent and the requirements (akin to conditions attached to planning permissions) that will be included in the DCO. The Council's case officer has met with and continues to meet with the applicant team to discuss the likely requirements to be imposed on the DCO Scheme as well as the required mitigation for the DCO scheme. Discussion has also taken place on the design and access statement that will accompany the application for development consent.

5.7.2 The Case Officer for the Council is Roger Wilmot.



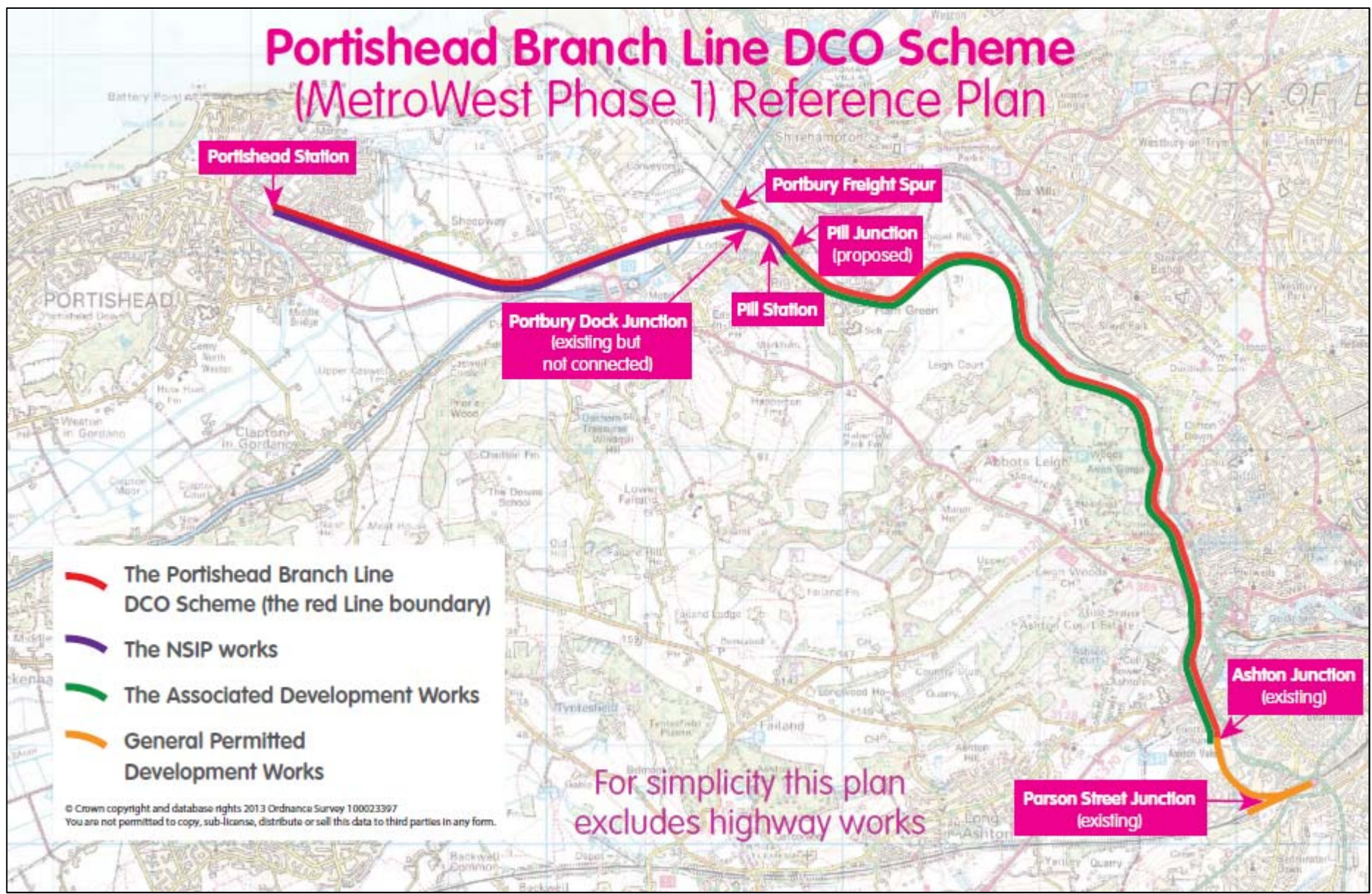
**24. REPRESENTATIONS AT HEARINGS AND APPROVING STATEMENTS OF COMMON GROUND.**

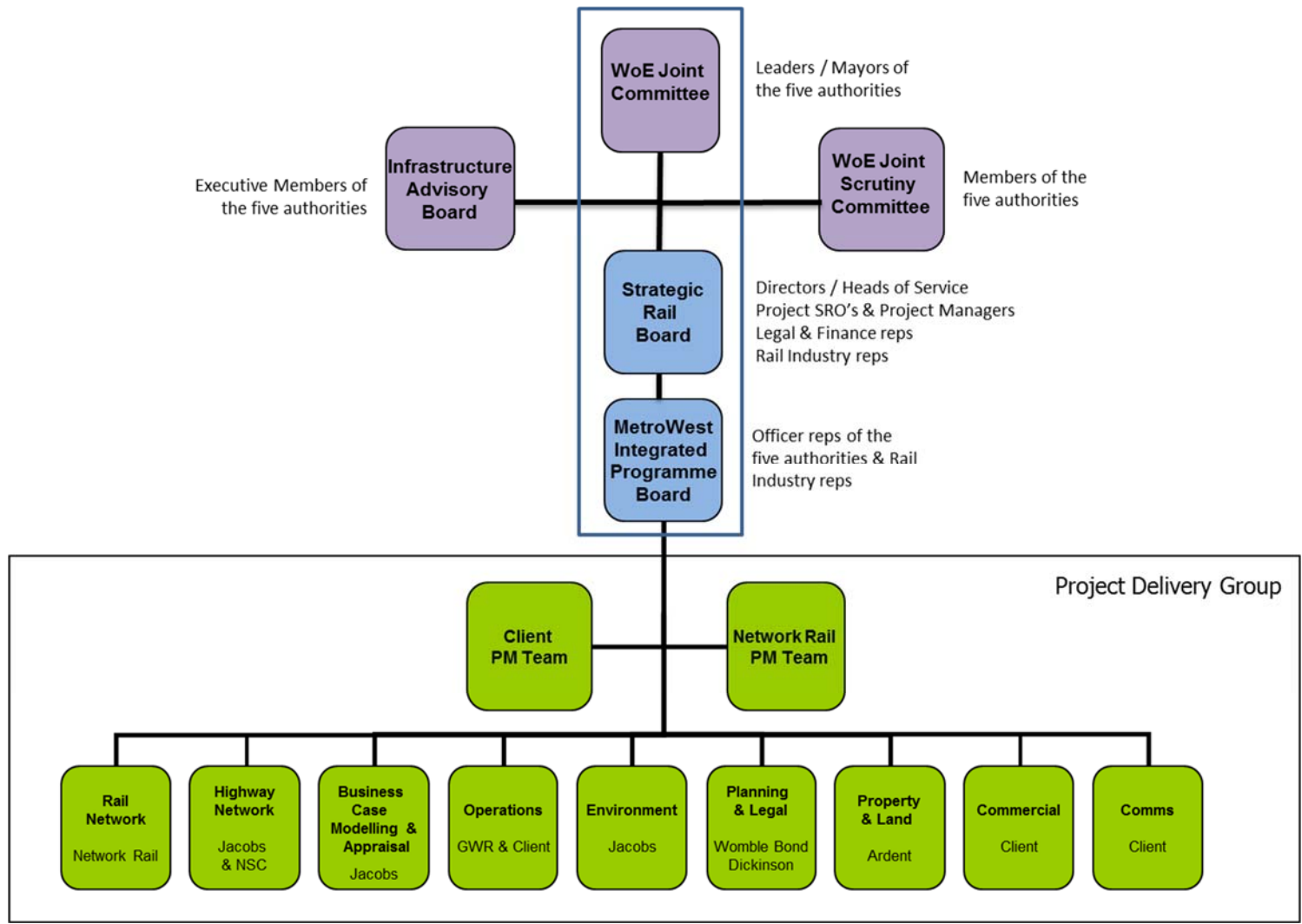
- 24.1 As indicated above the MetroWest Authorities, when requested in examination by the ExA to provide evidence on matters in issue, must be separately represented.
- 24.2 The settling of Statements of Common Ground (SoCG) with Applicant is also a key process for the MetroWest Authorities to consider when carrying out their statutory functions. Designating the relevant officers and considering if member approval may be needed for SoCG will need to be considered. Officers agreeing SOCG for the Council in its regulatory role must be entirely separate from those officers involved in the promotion of the Project.

**25. THE ROLE OF MEMBERS IN CONSIDERING THE LOCAL IMPACT REPORT**

The MetroWest Authorities may decide that members should agree and approve in Committee the Local Impact Report. This will be requested during the examination, but the document should, if it is to be considered by members, be on the Forward Plan for the autumn of 2019 to ensure that the report is appropriately timetabled to fit in with the examination.

# Portishead Branch Line DCO Scheme (MetroWest Phase 1) Reference Plan





## Appendix 3

### Summary of Schedule 16 of the Draft Order (Protective Provisions) and negotiations with Statutory Undertakers

1. Protective Provisions are included at Schedule 16 of the draft Order. They are either specific to the apparatus of an undertaker or generic to apply to a class of undertaker.
2. At the point of the application for the draft Order only the protective provisions for Network Rail are agreed. The other Parts of Schedule 16 may be subject to change at instigation of applicant or relevant undertaker.

#### *The Parts of Schedule 16 of the draft Order*

3. Protective provisions for the benefit of Network Rail's operational land are included in the draft Order. See Schedule 16, Part 1 of the draft Order (doc 3.1). These are in agreed form.
4. Standard protective provisions for gas, electricity and water undertakers are included in the draft Order. See Schedule 16, Part 2 of the draft Order. These are included to provide protection to apparatus owned by relevant undertakers where such apparatus is within the Order land. As is usual with linear schemes there are a substantial number of instances where such apparatus crosses or is in proximity to the authorised development.
5. Standard protective provisions for gas, electronic communications code operators are included in the draft Order. See Schedule 16, Part 3 of the draft Order. There are a number of instances where the equipment of code operators crosses or is in proximity to the authorised development.
6. Protective provisions for the benefit of Environment Agency are included in the draft Order. See Schedule 16, Part 4. These have been supplied by Environment Agency and adapted by the Applicant. They are relevant to four main river crossings within the Order land as well as the Order land being in proximity to areas within or close to flood plains. Further comments on this Part have recently been received from the Environment Agency. The Applicant will respond to the Environment Agency shortly after the application for development consent is submitted. Part 4 of Schedule 16 is therefore not in agreed form.
7. Protective provisions for the benefit of Bristol Port Company are included in the draft Order. See Schedule 16, Part 5. These are drawn from the National Grid (Hinkley Point C Connection Project) Order 2016 (2016 SI No. 49), but adapted to reflect the specific considerations applying

to the draft Order. They are included in relation to the activities of the Bristol Port Company at its Royal Portbury Dock. Part 5 of Schedule 16 is not in agreed form.

8. Protective provisions for the benefit of CLH Pipelines Systems Limited (CLH) are included in the draft Order. See Schedule 16, Part 6. These are drawn from the National Grid (Hinkley Point C Connection Project) Order 2016 (2016 SI No. 49), but adapted to reflect the specific considerations applying to the draft Order. They are included in respect CLH's pipe that crosses the disused railway near Sheepway and is also within Order land under the M5 Avonmouth bridge. Part 6 of Schedule 16 is not in agreed form. Negotiations for an agreement are ongoing.

9. Protective provisions for the benefit of Western Power Distribution Limited (South West) PLC (WPD) are included in the draft Order. See Schedule 16, Part 7. They are based on WPD's supplied standard provisions. This Part is included because WPD has a number of cables within Order land, principally at Portishead and Sheepway. Part 7 of Schedule 16 is not in agreed form. Negotiations for an agreement are ongoing.