

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

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

**Comments by First Corporate Shipping Limited trading as The Bristol Port Company (BPC) on information and submissions
made by other parties at deadline 4**

16 February 2021

Examination library reference	Document	Information/submission	BPC's comment
The Port's internal access track leading from Marsh Lane towards the M5			
REP4-020	Applicant's responses to written representations received at Deadline 3, relating to BPC's comments on Applicant's ExQ1 response, lines BPC-D3-001 and BPC-D3-005	The Applicant states its proposed rights over and use of the access track will not be incompatible with the rights of others who presently enjoy it or its use by the Port.	<p>BPC suggests that it is still not possible for BPC or the ExA to be confident that this is the case. There is no information in the DCO application documents which details the intended traffic flows over the track specifically or considers how these flows might relate to use by others. No information at all has been provided about the proposed use of the track by RRVs during construction. BPC is also aware of submissions being made to the examination that traffic movements related to the Lodway Farm compound currently proposed to pass through Pill should be diverted instead to use the Port's access track.</p> <p>Further, the Applicant suggests that its appointed contractor will ultimately determine the use of the Lodway Farm compound. This clearly implies that the Applicant accepts that it is that contractor</p>

			which will decide the nature and intensity of use of the track, regardless of any assessments that may have been made by the Applicant. The Applicant states that " <i>it will work with BPC and the other users of the track to enable all parties to continue to use the route</i> " but offers no enforceable mechanism to achieve this.
REP4-020	Applicant's responses to written representations received at Deadline 3, relating to BPC's comments on Applicant's ExQ1 response, lines BPC-D3-001 and BPC-D3-005	The Applicant states that it would comply with BPC's reasonable security requirements.	<p>BPC's concern is that the use of the track by significant volumes of construction traffic <i>of itself</i> creates a heightened security risk for the Port, regardless of whether it is, in practice, possible to ensure compliance with particular security requirements by a large number of third party haulage contractors. The creation of the proposed haul road over the track, including that part connecting the Port's track to the Lodway Farm compound, will enable significant numbers of large vehicles readily to have access very close to the Port's security fences in a way that would not otherwise be the case.</p> <p>The issue will be exacerbated if:</p> <ul style="list-style-type: none"> • any of the vegetation protecting those fences is removed, which removal must therefore be prohibited; and/or • the area over which the DCO authorises temporary possession extends, as is proposed by the Applicant, beyond the current borders of the track and up to the security fence line. Elsewhere (see Applicant's oral case and response to representations at ISH2, line 51) the Applicant refers to the track being only single width. The Applicant has therefore not explained or justified why any land beyond the current track should be subject to powers of temporary possession.
REP4-009	Applicant's oral case and response to representations at ISH2, lines 46 and 55	The Applicant considers there is no valid justification for it to be obliged to surface the access track.	The current condition of the track is wholly unsuitable for frequent HGV use, let alone along with use by large numbers of private cars and other light vehicles in connection with the DCO scheme. Part of it has no hard surface at all but even where a surface exists the 'surfaced' area is narrow and the quality of surfacing not designed

			<p>for frequent, heavy vehicular use.</p> <p>The apparent extent and type of surfacing currently on the track is not the only issue. Whether tarmacadam or unbound-granular material, the issue is the depth of construction and thus suitability for the traffic loading. Use of the track for regular, heavy, construction traffic requires a proper road construction with compacted layers of suitable material that might comprise capping material, subbase, base course and wearing course. Some reinforcement might be appropriate.</p> <p>The current condition of the track is adequate to accommodate the current, normal use of it, which is by cars, 4-by-4 vehicles and light goods vehicles, with only occasional HGV use, but if the additional use proposed by the Applicant is permitted unless appropriate works are carried out the condition of the track will rapidly deteriorate, which will affect the use of the track by all others who presently require its use.</p> <p>Further, unless a suitable surface is laid on the track, the frequent HGV movements proposed across it will cause dust and grit to be mobilised and damage the vehicles in the adjacent storage compounds. The Applicant notes (at line 46) the conclusion of the Air Quality Assessment that there will be a medium to high risk of dust soiling in this area and suggests dust suppression measures that should be adopted by way of mitigation.</p> <p>The car companies which use the storage compounds require that their vehicles are presented to their customers in perfect, factory-finished condition. Dust deposits may contain materials that rust or react aggressively with the vehicle's bodywork, meaning that works to clean any vehicles which have been affected by dust can be exacting and expensive, potentially involving complete resprays. Dust can also infiltrate sensitive internal parts of vehicles. BPC's interests will not therefore be protected by the implementation of a</p>
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			<p>generic dust management scheme.</p> <p>BPC notes the Applicant's suggestions as to dust mitigation measures that might be adopted and its suggestion that the implementation of those measures should be a matter for agreement between the Applicant, Network Rail and the local planning authority.</p> <p>Such an arrangement would not be adequate to ensure BPC's interests are protected. BPC disagrees that using Type 1 aggregate on the Marsh Lane track would be adequate: this material itself contains dust and its use will only exacerbate the problem even with constant maintenance. To avoid unacceptable adverse effects on BPC, specific mitigation measures are required, which must include the retention of the existing barrier vegetation and the provision of a sealed surface to the track. Sealing the track should also reduce the need for the other mitigation measures suggested by the Applicant.</p>
REP4-020	Applicant's responses to written representations received at Deadline 3, relating to BPC's comments on Applicant's ExQ1 response, line BPC-D3-005	The Applicant considers that use of the access track as proposed would not cause any serious detriment to the Port's operations or that protective provisions are required.	<p>BPC's concerns outlined above demonstrate the detriment that would be caused to its undertaking and operations if uncontrolled use of the track were permitted, including risks to the security of the storage compounds at the Port, damage to cargo from dust and other airborne particles and other port operations being impeded because of traffic on the track and its condition.</p> <p>BPC therefore repeats its view that in order to ensure use of the track is properly controlled, so that its use is not incompatible with the rights of others or its use by the Port as stated by the Applicant, protective provisions are required as set out in BPC-D3-005.</p>
Closure of the Court House Farm at grade crossing			
REP4-020	Applicant's responses to written representations received at Deadline 3,	The Applicant considers that it is not required and would be inappropriate for the DCO to provide for time	BPC's position is as set out in its comments on the Applicant's responses to ExQ1 submitted at deadline 3 (examination library reference REP3-046) in relation to question CA.1.10. BPC is

	<p>relating to BPC's comments on Applicant's ExQ1 response, line BPC-D3-006</p>	<p>constraints on the Port's use of the at grade/flat crossing at Court House Farm which would be in addition to or conflict with those in the existing easement, and that matters raised by BPC which relate to the terms of the existing easement are for negotiation between Network Rail and BPC.</p>	<p>continuing its dialogue with Network Rail in relation to the key timing issue identified in those comments, but as yet it has not been possible to reach any resolution of them.</p> <p>BPC believes that the Applicant's position confuses two distinct aspects of the DCO, being on the one hand the works comprised in the DCO scheme itself and the impacts of their construction and use and on the other how land interests necessary for the implementation of the scheme are to be secured (including the extent of any necessary powers of compulsory acquisition).</p> <p>The closure, in fact, of the current at grade crossing is clearly a direct result and impact of the Applicant's implementation of its desired DCO scheme, and one that will in the absence of alternative provision cause serious detriment to BPC's statutory undertaking. That effect must therefore be mitigated as part of the DCO scheme in the normal way. Since this impact of the DCO scheme was foreseen, it was possible for some advance preparation to take place (in the form of BPC's planning application for a bridge) to assist in enabling mitigation to be delivered if and when required. However, for that mitigation to be effective, BPC must also be allowed adequate time within the DCO works timetable to construct the bridge.</p> <p>The DCO therefore needs to make provision to enable this. This is the case regardless of the position in respect of proprietary rights relating to the crossing and whether any powers of compulsory acquisition are needed.</p> <p>As explained in its previous submissions, BPC has been willing to progress discussions with Network Rail with a view to securing satisfactory arrangements for construction of the bridge. However, it cannot accept as part of those arrangements that it should be compelled to incur the cost of this alternative provision before it is clear that such an alternative provision is actually required. Unless</p>
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			and until a satisfactory and legally binding agreement is reached with Network Rail, BPC's position remains that the draft DCO sought by the Applicant will require amendment to ensure the necessary mitigation can be secured and BPC is given adequate time to construct an alternative crossing once it is clear that alternative is needed.
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Blockades and possessions of the freight line during construction of the DCO scheme

REP4-020	Applicant's responses to written representations received at Deadline 3, relating to BPC's comments on Applicant's ExQ1 response, line BPC-D3-002	The Applicant considers that securing blockades and possessions is a matter adequately covered by the Railways Act and Network Rail licences, and not something the DCO should cover.	<p>BPC disagrees. The deprivation of access to the rail network for BPC's statutory undertaking will be a direct adverse result and impact of the construction of the proposed DCO development. This impact must be assessed as part of the overall assessment of the scheme's impacts before the DCO can be made and, just as is the case with any other adverse impact, provision must be made by the undertaker for mitigating that impact as part of the DCO scheme which it is promoting.</p> <p>The impact will be created by the undertaker, as developer of the DCO scheme, requesting access to the track to undertake the relevant works in accordance with its chosen programme, a request to which Network Rail (NR), in pursuance of its statutory functions, will agree or otherwise. BPC does not seek to control the exercise of NR's functions in that respect, but only the actions of the undertaker in relation to the programming of its works. This programming must take into account BPC's needs in relation to continued freight access and those parts of it that would necessitate blockades and possessions which will prevent BPC accessing the rail network must be agreed with BPC before any arrangements are discussed with NR in the exercise of its statutory functions.</p> <p>The Applicant's previous responses on this topic recognised the need for negotiation with BPC in order to avoid there being any unacceptable impacts on BPC during construction. The need for</p>
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		The Applicant states that document 9.23 ExA.ISH2.D4.V1 further deals with this topic.	The document referred to (Applicant's oral case and response to representations at ISH2, line 36) does not deal with arrangements for the timing of blockades and possessions.
Ecology			
REP4-020	Applicant's responses to written representations received at Deadline 3, relating to BPC's comments on Applicant's ExQ1 response, line BPC-D3-004	The Applicant does not agree that provisions to ensure that the authorised development is implemented in compliance with BPC's Ecological Management Plans should be include in the DCO.	Section 48A of the Harbours Act 1964 imposes a statutory duty on all harbour authorities to have regard to and take into account, among other things, the conservation of flora, fauna and geological or physiographical features of special interest when formulating or considering any proposals relating to their statutory functions. BPC's Ecological Management Plans form part of its discharge of these duties. It is therefore both necessary and reasonable that the implementation of the Applicant's proposals so far as they affect BPC's land should be in accordance with these Plans, and that this requirement, affecting as it does the discharge by a statutory undertaker of its functions, is secured by protective provisions.
Use of BPC's railway			
REP4-020	Applicant's responses to written representations received at Deadline 3, relating to BPC's comments on Applicant's ExQ1 response, line BPC-D3-007	The Applicant believes that its proposed acquisition by compulsion of rights over BPC's railway (and associated access) on the terms set out in schedule 10 of the draft DCO (affecting plots 5/104, 5/107, 5/108, 5/165, 5/171. 6/25 and 6/55) will not cause serious detriment to BPC's statutory undertaking	The plots cited comprise BPC's private railway. Schedule 10 of the draft DCO provides for the compulsory acquisition of rights over the railway and sets out the terms of the rights sought, those terms differing between three different parts of the route. However, so far as access for rail vehicles are concerned, each of the proposed rights is drafted in the widest possible terms which would permit the beneficiary of the rights to have access for its rail vehicles over BPC's railway as frequently as it desired, at any and all times of the day and night and without any notice to BPC. It is patently the case that the existence and exercise of a wholly uncontrolled right of that type over BPC's railway would cause

			<p>serious detriment to BPC's statutory undertaking.</p> <p>To date, the Applicant has been unable to provide further detail of what it would propose as to the manner in which the rights might actually be exercised. It has therefore not been possible to determine whether limitations and controls might be imposed on the rights which might enable them to be exercised without causing serious detriment.</p> <p>Therefore, BPC's position remains that the DCO should not be made containing the powers of compulsory acquisition of rights on the terms set out in schedule 10 and that accordingly protective provisions must be included as suggested in paragraph 6.2 of BPC's written representation to enable the exercise of the powers properly to be controlled.</p>
		<p>The Applicant considers that use of BPC's railway line by Network Rail is better dealt with through revisions to the BPC/Network Rail connection agreement or entry into a replacement connection agreement.</p>	<p>BPC does not understand this comment. Connection agreements are template forms of agreement which define and deal with the connection point between a private rail facility and the network and the infrastructure necessary to enable access over that connection. They do not provide rights for either party to use the wider railway infrastructure of the other.</p> <p>In any case, it is not appropriate for the Applicant to seek to justify its acquisition of extensive rights over BPC's railway on the basis that it is for BPC to negotiate with a third party (Network Rail) if it requires any limitations on those rights.</p>
Train movements			
REP4-009	<p>Applicant's oral case and response to representations at ISH2, line 36 and appendix 4</p>	<p>In respect of the continuity of freight trains into the future the Applicant considers preserving freight paths is not best dealt with in the Order. This would be better dealt with under the</p>	<p>BPC has reviewed the information provided by the Applicant in Appendix 4 to the Applicant's oral case and response to representations at ISH2, but considers this does not affect the points made by BPC in its Response to action points 19 and 20 from ISH2 submitted at deadline 4 (REP4-060) and repeats its views in that</p>

		<p>existing arrangements through the Railway Act 1993.</p> <p>There is nothing in the draft Order that would restrict the use of the Branch line for the Port. There is a clear regime to deal with the number of train paths that are available to the Port.</p> <p>Access to the Portbury route will be subject to ORR regulation.</p>	<p>Response.</p> <p>BPC is pleased to note that the Applicant now agrees that the correct number of daily freight train movements permitted by the planning permission is 40, that is 20 trains arriving at RPD and 20 trains departing RPD each day, and not the lower numbers suggested by the Applicant and Network Rail at ISH2.</p> <p>As the officer's report in connection with the planning permission made clear, North Somerset Council agreed that this level of traffic (combined with the new, hourly restriction imposed by the planning permission) would not cause any problem for the MetroWest scheme and should work alongside it. BPC therefore finds it difficult to understand the Applicant's current reticence in accepting BPC's suggested protective provision, which seeks only to confirm that as between BPC and the Applicant such previously agreed level of traffic may indeed be maintained. The timetable information provided by the Applicant does not provide this assurance: it is only an extract and in any event there is nothing proposed in the DCO that would require that timetable to be adopted or maintained.</p>
<p>REP4-021</p>	<p>Applicant's response to Examining Authority's Actions from ISH2, action point 19 and appendix 1</p>	<p>While the freight line remains a freight line only, planning permission 11/P/1893/F allows an upper limit of 20 freight trains per day into Royal Portbury Dock (RPD) and 20 freight trains out of RPD per day. When scheduled passenger services are reintroduced, an additional restriction limits freight trains to one per hour into RPD and one per hour out of RPD.</p> <p>The proposed infrastructure is sufficient to provide capacity for one freight train into RPD per hour and one freight train per hour out of RPD per hour alongside the proposed passenger service. The Applicant has provided a Working Train Timetable to BPC.</p>	<p>If (which BPC does not accept) the Applicant's position were correct, and all issues of train movements, timetabling and train paths affecting the freight and passenger services will adequately and properly be controlled through the Railways Act procedures, then it follows that the Applicant would also have to accept that the hourly restriction imposed by planning permission 11/P/1893/F and the peak hours restriction imposed by the s106 agreement dated 26 October 2000 (both of which were imposed purely to protect the operation of the future passenger service) were equally unnecessary and are therefore unenforceable. If the Applicant's current position were correct, Railways Act regulation would have ensured that appropriate access for the passenger service would always be available despite the operation of the freight service and no</p>

			<p>provision seeking to protect the future operation of the passenger service could or should have been included in either a planning permission or any related agreement.</p> <p>That those provisions were included in the development consent and related agreements relating to the rail link demonstrates that the protective provision now sought by BPC may and should be included in the DCO.</p>
Controlled crossing/central refuge on Royal Portbury Dock Road			
REP4-042	North Somerset Council - Post Hearing Submission - Response to matters raised at the Issue Specific hearings 2 and 3, action point 29	The Council wished to explore the possibility of pedestrian operated traffic signals or a central refuge on Royal Portbury Dock Road.	BPC is aware that others have also suggested that user controlled traffic lights should be installed where the bridleway exits onto Royal Portbury Dock Road. However, BPC supports the Applicant's view that these measures would not be necessary or justified, on either a temporary or permanent basis. Visibility along the road is good with a 30mph speed restriction, making any form of assisted crossing at this point unnecessary. A splitter island (between the entry and exit roads) slightly further along the road towards the roundabout already provides a refuge for those wishing to cross. Further, Royal Portbury Dock Road is the key route for traffic to and from Royal Portbury Dock. Any kind of user controlled traffic signal would interrupt traffic flows and potentially cause traffic to block back from both roundabouts, resulting in congestion in the Port and towards the M5, which is what the roundabouts are designed to avoid. It was for this reason that in early discussions with the Applicant BPC opposed the introduction of such signals and that remains its position.
Traffic on Marsh Lane			
REP4-063 & REP4-037	M Berry - Post Hearing Submission - Response to Action Points 29,30 and 15 of	Various measures are suggested in relation to the control of traffic on Marsh Lane, including speed	Given its use in connection with traffic resorting to and from the Port, BPC would object to proposals to close any part of Marsh Lane or to introduce one-way working or speed humps. However, to the extent

	<p>ISH 2</p> <p>Bill Ovel on behalf of Pill & Easton-in-Gordano Parish Council - Post Hearing Submission - Response to Agenda item 4 of ISH2</p>	<p>restrictions, speed humps and partial closures.</p>	<p>they are not already in place, BPC would be supportive of suitable speed reductions being implemented along the whole of Marsh Lane.</p>
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