

The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Your Ref
TRO40011
Our Ref
ENB/SBC/005694.0379
Date
15 March 2021

By Email: Metrowest1@planninginspectorate.gov.uk

Dear Sir or Madam

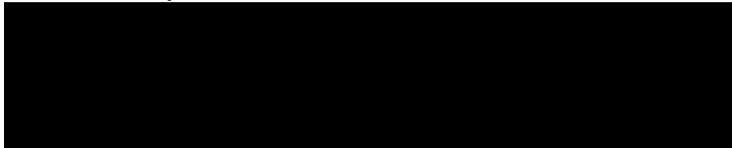
**Proposed MetroWest Branch Line Order and Hinkley Point C Connection Project Order
Deadline 6 Submission - Written Summary of Case Made Orally at Compulsory Acquisition
Hearing 2
Interested Party Reference Number: 20025228**

We are instructed by National Grid Electricity Transmission plc (**NGET**) in relation to the interaction of North Somerset Council's proposed MetroWest Phase 1 Order and the National Grid (Hinkley Point C Connection Project) Order 2016 and Correction Order 2017.

In accordance with the Examination Timetable and Action Point 9 of the Hearing Action Points arising from the Compulsory Acquisition Hearing 2 which was held virtually on Wednesday 3 March 2021, please now find enclosed NGET's written summary of its case made orally at that hearing.

Please do not hesitate to contact us should you require any further information.

Yours faithfully



Registered Office

One Bartholomew Close
London
EC1A 7BL
DX 339401 London Wall

50/60 Station Road
Cambridge
CB1 2JH
DX 339601 Cambridge 24

The Anchorage
34 Bridge Street
Reading, RG1 2LU
DX 146420 Reading 21

Grosvenor House
Grosvenor Square
Southampton, SO15 2BE
DX 38516 Southampton 3

T +44 (0)345 222 9222

W www.bdbpitmans.com

PROPOSED PORTISHEAD BRANCH LINE – METROWEST PHASE 1

WRITTEN SUMMARY OF CASE PUT ORALLY BY NATIONAL GRID ELECTRICITY TRANSMISSION PLC AT COMPULSORY ACQUISITION HEARING 2 ON 3 MARCH 2021

1. Introduction

- 1.1. This document summarises the case put by National Grid Electricity Transmission plc (**NGET**) at Compulsory Acquisition Hearing 2 (**CAH2**) which took place virtually over Microsoft Teams on 3 March 2021.
- 1.2. In what follows are NGET's submissions on the points raised by the Examining Authority (**ExA**) under Agenda Item 5 for CAH2 which was published on the Planning Inspectorate's website on 2 March 2021.
- 1.3. Sinead Morrissey (**SM**), Senior Associate at BDB Pitmans LLP, introduced herself and advised she would be representing NGET at CAH2.
- 1.4. SM explained that NGET has no objection in principle to North Somerset Council's (**the Applicant**) proposed scheme and is supportive of its objectives. However, NGET is seeking to ensure that the Applicant's proposed Development Consent Order (**DCO**) (**the proposed Order**) includes suitable and appropriate protections for its nationally significant infrastructure scheme which will bring electricity to the south west and the Midlands from the new nuclear power station.
- 1.5. SM explained that NGET's interest in relation to the proposed Order is statutory in nature in that it has been authorised by the Secretary of State (**SoS**) in the National Grid (Hinkley Point C Connection Project) Order 2016 (**the Hinkley Order**); all powers required to build and operate the connection have been granted.
- 1.6. SM noted that construction has already commenced along other parts of the consented route in accordance with the Hinkley Order. The apparatus which will be placed over a number of the relevant plots where the Applicant is seeking compulsory acquisition powers has not yet been installed. However, SM explained that there is a possibility that NGET will have either secured the relevant land rights required in connection with the apparatus by voluntary agreement, or exercised its own compulsory acquisition powers over the relevant plots by the time a decision could be expected to be made by the SoS in relation to the proposed Order i.e. around October 2021.

2. NGET Apparatus and Existing Land Rights

- 2.1. In terms of apparatus within the relevant plots where the Applicant is seeking permanent acquisition and other land powers such as temporary possession and acquisition of permanent new rights, SM noted that there will be two overhead lines oversailing part of the railway which is shown on sheet 2 of the Land Plans for the Applicant's proposed Order (note SM corrected this reference later on in CAH2, explaining that there will be one overhead line and two conductors). SM noted that it is anticipated this apparatus will be installed between July and August 2023.
- 2.2. SM reiterated that NGET does not wish to interfere with the Applicant's proposed scheme in any way and instead is seeking to agree the terms of Protective Provisions (**PPs**) in order to benefit both its own consented scheme and the Applicant's proposed scheme. The inclusion

of PPs on the face of the Applicant's proposed Order is the most straightforward way to deal with the interaction between the two schemes.

- 2.3. In terms of existing land rights, SM explained that NGET exchanged an Option Agreement in respect of a number of the plots over which the Applicant is seeking compulsory acquisition and temporary possession powers on 15 September 2014, as set out in more detail in the table below:

Land Plan Sheet Number	Plot Number	Option Agreement	Powers sought by Applicant
2	45	Option Agreement dated 15.09.2014 registered on Title Number ST234160	Temporary possession for construction, mitigation, access etc.
2	55	Option Agreement dated 15.09.2014 registered on Title Number ST234160	Compulsory acquisition of all estates and interests
2	120	Option Agreement dated 15.09.2014 registered on Title Number ST234160	Temporary possession for construction, mitigation, access etc.
2	121	Option Agreement dated 15.09.2014 registered on Title Number ST234160	Compulsory acquisition of permanent new rights
2	122	Option Agreement dated 15.09.2014 registered on Title Number ST234160	Temporary possession for construction, mitigation, access etc.

- 2.4. The Option Agreement allows for NGET to take a permanent easement over the above plots in connection with its overhead line and associated apparatus.
- 2.5. SM explained that BDB Pitmans has been instructed to execute several General Vesting Declarations (**GVD**) in respect of other parts of the Hinkley Order route where construction is already underway.
- 2.6. The tower locations in the area affected by the Applicant's proposed scheme have not yet been fixed and whilst NGET cannot therefore be certain that compulsory acquisition powers would be exercised in respect of the relevant plots by October 2021, it is a possibility. NGET served notice on the Applicant of its intention to take temporary possession of the following plots in accordance with Article 29 of the Hinkley Order on 5 November 2020: 02/20; 02/25; 02/26; 02/27; 02/50; 02/51; 02/52; 02/53; 02/55; 02/60; 02/70; 02/75; 02/82; 02/83; 02/85; 02/86; 02/90; 02/95; 02/96; 02/100; 02/101; 02/110; 02/125; and 02/130.
- 2.7. Following CAH2, NGET has confirmed that it will be in a position to secure the land interests required in connection with the apparatus either by voluntary agreement, or if this is not possible, through the use of its compulsory acquisition powers contained within the Hinkley Order, prior to October 2021.

3. Section 127 of the Planning Act 2008

- 3.1. SM referred to the cover letter which was submitted by NGET at Deadline 4 (19 January 2021), which set out NGET's view that the provisions of Section 127 of the 2008 Act (**the 2008 Act**) in relation to statutory undertakers' (**SU**) land apply in this case.
- 3.2. Section 127 applies if:
 - land has been acquired by a SU for the purposes of their undertaking;
 - a representation has been made about an application for a DCO which has not been withdrawn; and
 - the SoS is satisfied that the land is used for the purposes of carrying on the undertaking **or an interest in land is held for those purposes** [our emboldening for emphasis].
- 3.3. Where section 127 applies, the SoS can only grant a DCO which provides for the compulsory acquisition of a SU's land if it is satisfied that:
 - it can be purchased without serious detriment to the carrying on of the undertaking; or
 - if purchased it can be replaced by other land belonging to or which can be acquired by the undertaker without serious detriment to its undertaking.
- 3.4. SM noted that similar provisions apply in relation to the compulsory acquisition of rights over a SU's land.
- 3.5. As set out in the Applicant's response to the ExA's second round of written questions with regard to NGET's proposed PPs at Deadline 5 (16 February 2021), the Applicant does not consider the relevant protection which NGET requires in respect of its statutory functions should take the form of PPs on the face of the proposed Order, on the basis that NGET does not currently hold any land interest or have any apparatus currently in situ within the proposed Order land. The Applicant therefore submits that section 127 of the 2008 Act is not engaged.
- 3.6. SM submitted that, in respect of those plots where an Option Agreement has been exchanged, an interest in land already exists; the Option is registered on the title register for the affected plots at the Land Registry (Title Number ST234160). It is NGET's view that the position with regards to the Option Agreement is analogous to a situation between exchange of contracts and completion of a transfer in a land sale agreement; the purchaser has an equitable interest in the land from the point of exchange of contracts. Similarly, NGET has an equitable interest in those plots which are subject to the Option Agreement.
- 3.7. SM further noted that, in respect of those plots where no Option Agreement has been exchanged and no compulsory acquisition powers have been exercised by NGET, it is NGET's intention to rely either on its compulsory acquisition powers or to seek to agree the requisite rights voluntarily and there is a chance that such rights will have been secured before a decision is expected to be made by the SoS in relation to the proposed Order.
- 3.8. SM explained that in any event with regards to timing of the acquisition of rights by NGET, NGET's scheme is fully funded, is already under construction and will be fully implemented; it is not a question of if the apparatus will be installed, but when it will be installed.
- 3.9. SM noted that previously made DCOs have included PPs for the benefit of SUs, despite the relevant undertaker not having acquired all of the land concerned. SM gave the example of

the M42 Junction 6 DCO 2020 which included PPs for the benefit of High Speed Two (HS2) Limited, notwithstanding that HS2 had not yet acquired all of the relevant land.

3.10. As noted at 2.7 above, following CAH2, NGET has confirmed that it will be in a position to secure the land interests required in connection with the apparatus which is to be installed within the relevant plots prior to October 2021 (when a decision on the proposed Order is expected to be made).

4. Alternative Position to Section 127 of the 2008 Act

- 4.1. SM noted that, notwithstanding NGET’s position with regards to the engagement of section 127 of the 2008 Act and in the event that the ExA and / or the SoS do not consider that section 127 applies here, we would still argue that NGET is entitled to PPs in the proposed Order, for reasons which were set out by SM and are summarised below.
- 4.2. SM noted that although reference was made to section 127 in the cover letter which accompanied NGET’s submission at Deadline 4, engagement of that provision is not a pre-requisite to the inclusion of PPs in a DCO.
- 4.3. In the event that the ExA and / or the SoS takes the view that section 127 is not engaged at this point in time, and either will not or may not be at the point at which the proposed Order is made if granted, NGET still takes the view that PPs ought to be included on the face of the proposed Order. NGET has already been granted consent for the Hinkley Project by the SoS. This is of sufficient importance to merit recognition of the statutory interest in the proposed Order.
- 4.4. SM noted that if the Applicant’s proposed Order is granted, both parties will have statutory powers in relation to the same parcels of land, and it therefore makes sense to regulate their interaction on the face of the proposed Order. Such regularisation is of benefit to the Applicant as well as NGET; NGET has already been granted statutory powers to construct and operate its scheme.
- 4.5. SM noted that a party does not need to be a SU or body to have the benefit of PPs on the face of a DCO and referred to other DCOs which have included PPs for the benefit of such parties. SM referred to the example of the A303 (Amesbury to Berwick Down) DCO 2020 which contained PPs for the benefit of Esso Petroleum Company Limited.
- 4.6. Further examples of previously granted DCOs which have included PPs for the benefit of non-SUs are set out in the table below:

DCO	Party with benefit of PPs	Summary of PPs
The A303 (Amesbury to Berwick Down) Development Consent Order 2020 Sch.11, Part 4	Esso Petroleum Company Limited	<p>Para 30: the undertaker cannot acquire any apparatus or acquire, suspend, extinguish or affect any of the existing rights without agreement from Esso.</p> <p>Para 31: the undertaker cannot remove any apparatus, and Esso’s rights to maintain and use apparatus remain, until alternative apparatus has been constructed and is in operation, and access to it has been provided,</p>

		<p>to the reasonable satisfaction of Esso. <i>(Para also details notice provisions and process of carrying this out)</i></p> <p>Para 32: Where the undertaker is providing Esso with facilities and rights for alternative apparatus they should be granted on agreed terms and conditions. In default, determined by arbitration. <i>(Para also details timings, a particular easement and third party involvement)</i></p> <p>Para 33: the undertaker must give Esso 35 days' written notice and a works plan before commencing any works which may affect any of Esso's apparatus or power supply to any apparatus which does not need to be removed. A shorter period may be agreed in writing. <i>(Para details what is to be included in the works plan, process and further requirements from Esso)</i></p> <p>Para 35 to 36: the undertaker must pay to Esso reasonable costs and compensation for damage. <i>(Paras detail scope of costs and compensation)</i></p> <p>Para 37: Both parties should co-operate and act reasonably. <i>(i.e. consent not to be unreasonably withheld)</i></p> <p>Para 38: PP's don't affect other rights between the undertaker and Esso.</p>
<p>The Immingham Open Cycle Gas Turbine Order 2020</p> <p>Sch.9, Part 4</p>	<p>Phillips 66 Limited</p>	<p>Para 36 to 38: No works which may have an effect on the operation, maintenance, abandonment of or access to any pipelines can commence until P66 Ltd have approved work details. P66 may give conditions but not be unreasonable.</p> <p>Para 40: P66 must be given min. 28 days' notice of commencement of such relevant works in order that an engineer can be made available to observe works and advise on safety precautions when required.</p> <p>Para 41 to 43: Undertaker must provide P66 with data for any existing cathodic protection of the affected asset, carry out stress analysis on pipe and monitor any damage to pipes.</p> <p>Para 46: Undertaker must take out insurance.</p> <p>Para 48: Undertaker to pay all reasonable costs of P66 and indemnify them (Para 63, 68).</p> <p>Para 57 to 61: Undertaker to ensure damage is minimised and reinstate P66 land.</p>
<p>Sch.9, Part 6</p>	<p>CLH Pipeline System (CLH-PS) Ltd</p>	<p>Para 116: Undertaker must submit plans to CLH before commencing any part of the authorised development which would have an effect on the</p>

		<p>operation or maintenance of CLH's pipeline and access to it. CLH may request more particulars within 28 days.</p> <p>Para 117 to 118: Such works must be approved by CLH (not to be unreasonably withheld).</p>
Sch.9, Part 7	Centrica Storage Limited	<p>Para 121 to 122: Before any work which would have an effect on the operation or maintenance of the pipeline and access to it commences, undertaker must submit to Centrica plans and sections of proposed works, a copy of the construction traffic management plan and the construction environmental management plan. Centrica may request more particulars within 28 days.</p> <p>Para 123 to 124: Such works must be approved by Centrica (not to be unreasonably withheld).</p> <p>Para 125: Undertaker must bear and pay costs incurred by Centrica in making good any damage or interruption to supply as a result of authorised development. Total liability £10m for any event or connected series of events.</p>
Sch.9, Part 9	Total Lindsey Oil Refinery Limited	<p>Para 137: Undertaker must submit plans to TLOR before commencing any part of authorised development which would have an effect on operation or maintenance of pipelines and access to them. TLOR may request more particulars within 28 days.</p> <p>Para 138 to 139: Such works must be approved by TLOR (not to be unreasonably withheld).</p>
The Able Marine Energy Park DCO 2014 Sch.9, Part 12	Bethaney Jane Ltd	<p>Para 108: Before interfering with or extinguishing any existing rights for Bethany Jayne Ltd to (with the agreement of Bethany Jayne Ltd) create substitute rights that are reasonably convenient for Bethany Jayne Ltd. Agreement is not to be unreasonably withheld and subject to arbitration if there is dispute.</p>

5. Responses from the Applicant

5.1. Richard Guyatt (**RG**), Partner at Womble Bond Dickinson, who was representing the Applicant, responded to points which had been made by SM. In summary, RG noted that:

5.1.1. There is a need to think about who owns the relevant land, noting that the Applicant owns the principal part of the land.

5.1.2. NGET is seeking compulsory acquisition powers over the Applicant's land and then seeking to impose restrictions on how the Applicant uses its land.

5.1.3. In every other DCO situation where NGET has made comments, PPs apply where the applicant is seeking to acquire land where the party seeking protection already has apparatus installed.

5.1.4. The Applicant accepts that previously made DCOs may include PPs for non-SU parties but noted that this would need to be considered on a case by case basis; the Applicant does not consider that other DCOs referred to reflect the situation where the applicant owns the land concerned.

5.2. In response to points made by RG on behalf of the Applicant, SM noted that:

5.2.1. NGET already has statutory powers for its scheme, construction has already commenced and the relevant apparatus will be installed over the railway between July and August 2023. It is therefore completely sensible that the position with regards to the interaction between the two schemes is regularised at the point the proposed Order is made.

5.2.2. The matter of NGET's acquisition of rights over the Applicant's land in accordance with the Hinkley Order is a completely separate matter to that of the requirement for PPs in the proposed Order. Whilst NGET does not consider the matter of land rights to be irrelevant and indeed is keen to continue to discuss the voluntary acquisition of such rights with the Applicant, the acquisition of those rights, whether voluntarily or compulsorily, does not negate the need for PPs.

5.2.3. To expand on the response provided by SM during CAH2 in this regard, NGET would require the land rights over the Applicant's land whether or not an application for the proposed Order had been submitted. The need for PPs only arises because of the requirement to protect NGET's position as a provider of critical infrastructure insofar as it may be affected by the proposed Order.

5.3. The ExA asked if the Applicant had made similar representations in relation to PPs at the time Hinkley Order was being considered. RG explained that the Applicant had asked for PPs but NGET did not agree they were required. RG further noted that the ExA and the SoS agreed with NGET in this regard and as such no PPs were included in the Hinkley Order for the benefit of the Applicant.

5.4. SM noted the distinction between the situation where the Applicant was seeking PPs in the Hinkley Order and the current situation; at the time the Hinkley Order was being considered, the Applicant had not yet submitted its application for development consent. This was therefore a very different situation to the current one, where NGET has secured consent for and commenced construction of its scheme.

5.5. In order to provide further information and clarification in response to the ExA's query, extracts from the ExA's recommendation report to the SoS and the SoS's decision letter in relation to the Applicant's request for PPs in the Hinkley Order are appended to this document (**Appendix 1**).

6. National Grid's Proposed Protective Provisions

6.1. SM noted that NGET had not received any comments from the Applicant in relation to the proposed form of PPs. RG responded that this was because the Applicant did not consider that PPs were required but that the Applicant could provide its own suggested form of PPs which could be used in the event that the ExA and / or the SoS agreed with NGET that they ought to be included in the proposed Order.

6.2. SM noted that the proposed PPs are in a standard form which are similar to those which have been included in the following DCOs:

- 6.2.1. The M42 Junction 6 DCO 2020;
 - 6.2.2. The Cleve Hill Solar Park Order 2020;
 - 6.2.3. The Riverside Energy Park Order 2020; and
 - 6.2.4. The Hornsea Three Offshore Wind Farm Order 2020.
- 6.3. SM provided a summary of the proposed form of PPs.
 - 6.4. RG made several points in relation to the proposed PPs, but it was agreed that such matters should be discussed between the parties outside of CAH2.
 - 6.5. SM confirmed that it would be helpful to NGET for the Applicant to provide comments on the proposed PPs, which NGET could then respond to.
 - 6.6. As at the date of this submission (15 March 2021), NGET has not yet received any comments from the Applicant in relation to the proposed PPs.
 - 6.7. SM reiterated that the acquisition of rights over the Applicant's land by NGET is a separate matter to the protection which NGET must have in respect of its statutory interests insofar as those interests may be affected by the proposed scheme.

APPENDIX 1

Hinkley Point C Connection Project – Examining Authority’s Report of Findings and Conclusions and Recommendation to the Secretary of State for Energy and Climate Change

“THE OBJECTIONS RECEIVED TO THE COMPULSORY ACQUISITION PROPOSALS

...

North Somerset Council - Objection No 41

8.4.64 At the CAH, North Somerset Council appeared as land owner and as promoter of its own application for a Nationally Significant Infrastructure Project (NSIP) – the re-opening of the Portishead to Parson Street, Bristol railway and the details of its case are set out in its oral summary of the CAH [REP5-005].

8.4.65 The Portishead Railway would, when re-opened, become part of the national rail network and subject to the terms of NRIL's operating licence. The title to the track bed would almost certainly be transferred to NRIL. North Somerset Council seeks terms that would be appropriate when granted by NRIL for crossings of railway infrastructure by the Applicant's apparatus.

8.4.66 The formal development consent order application process for the Portishead Railway is about to commence. The Statement of Community Consultation has been provided to the relevant local authorities for the provision of their views prior to it being issued and placed on deposit. This is anticipated to take place on or around 22 June 2015. Agreement is in place in relation to collaboration with NRIL for the scheme to be taken forward. The anticipated timetable for the application is that the draft order will be submitted to the Planning Inspectorate in June 2016. If consent is given, then it is anticipated in Autumn 2017, and ideally start on site would occur in late 2017. It is hoped that the railway would be operational (and become part of NRIL's network) by 2019. North Somerset Council submits that this is not the safeguarding of a possible future scheme, but a real, live, NSIP which has the benefit of considerable local support.

8.4.67 North Somerset Council contends that the best way forward would be for the Secretary of State, and for the Applicant, to assume that an operational railway would be in place at the time the project promoted by it is under construction. Therefore, the powers sought over North Somerset Council's land need to be subject to protections as to their exercise against its ownership of that land. The Applicant should be required by the Secretary of State (through protective provisions, if an asset protection agreement has not been secured allowing for such protections) to exercise powers to construct its project as if an operational railway exists. These protections also need to apply for maintenance following the reinstatement of the railway.

8.4.68 The position is essentially that protection should be in place either in the DCO, or in an agreement outside of the DCO, to secure protections for the land as if it was operational railway. As North Somerset Council is promoting its own NSIP, the dis-benefit to the public arising if the unlimited powers currently sought by the Applicant were granted, would weigh heavily against the compelling case in the public interest that it must demonstrate under s122(3) PA2008. The issue is easily remedied by providing the protections sought, which are capable of benefitting NRIL as network operator following the reinstatement of the Portishead railway.

...

THE APPLICANT'S CASE AND RESPONSE TO OBJECTIONS MADE BY AFFECTED PERSONS

...

North Somerset Council - Objection No 41

8.4.87 At the CAH, the Applicant confirmed that it was in negotiations with North Somerset Council regarding the potential re-opening of the Portishead to Bristol railway line and the subsequent protections needed for the railway line. It was agreed that the ExA would be provided with an update on negotiations by Deadline 6.

8.4.88 At Deadline 7, the Applicant submitted a Position Statement in respect of North Somerset Council [Doc 8.34.3]. The Applicant also comments on the submissions made on behalf of this objector in its letter dated 17 July 2015 [RE8-012]. The draft DCO contains detailed protective provisions for the benefit of NRIL. As such, any interests NRIL might acquire in new operational railway, and associated land, would benefit from those protective provisions. However, NRIL does not currently enjoy any interest in the land in question and so the Applicant does not agree that it should be required to negotiate with NRIL to secure by agreement, or should it prove necessary through the exercise of Order powers, land interests from North Somerset Council. The Statement of Common Ground between NRIL and the Applicant [Doc 8.3.9] erroneously identified the land required for the proposed railway reinstatement as belonging to NRIL.

8.4.89 Given that the land is not currently operational railway land, the Applicant does not agree that the terms NRIL would ordinarily impose on crossings of existing railways would be appropriate, particularly where those terms relate to commercial matters or the allocation of risk associated with such a crossing. In this instance, the Applicant has already designed its proposals and submitted an application for development consent, whilst North Somerset Council's proposals have not yet been the subject of such a submission. The Applicant does not agree that it would be fair, or appropriate, for it to meet the full costs associated with design compatibility in all circumstances.

8.4.90 If the railway is built first, the protective provisions within the draft DCO would automatically operate for its protection, assuming the railway formed part of NRIL's network. As such, no assumption that the railway will be operational is considered to be necessary. However, if the railway is not built first, such an assumption places an unduly onerous burden on the Applicant, as it would effectively require it not only to design and operate the proposed development around a railway that does not yet (and might never) exist but also to bear all costs associated in doing so.

8.4.91 In addition, if the railway has yet to be built when the Applicant constructs the proposed development, any design compatibility would not only need to accommodate an operational railway but also the construction of a new railway. North Somerset Council's requirements during construction of its proposals must also be taken into account in such circumstances and to assume the existence of a railway yet to be built would not achieve this.

8.4.92 The Applicant does not agree that its powers under the draft DCO should be restricted in the manner suggested by North Somerset Council. In the Applicant's Position Statement in respect of NRIL [Doc 8.34.1], it sets out its submissions as to why it does not agree that it should be required to secure NRIL's consent to the exercise of Order powers to acquire land interests. The same arguments also apply here with regards to the nature of the land interests the Applicant is seeking to acquire.

8.4.93 The Applicant considers that it should exercise any Order powers as if an operational railway is 'planned'. The draft DCO already includes protective provisions that would apply to the benefit of any 'railway property' in existence when the Applicant seeks to construct the proposed development. The Applicant is seeking to agree terms for an agreement with North Somerset Council to provide appropriate protection to it in respect of its future plans. The Applicant does not consider it necessary, or appropriate, to propose new or additional protective provisions for the benefit of North Somerset Council or the proposed railway for inclusion within the draft DCO.

...

THE PANEL'S CONSIDERATION OF OBJECTIONS

...

The case for specific parcels

North Somerset Council - Objection No 41

8.5.62 The North Somerset Council (NSC) is scheduled in the BoR as registered proprietor of a number of plots which form part of the title to the former Portishead railway line. For the majority of the plots, the Applicant seeks permanent powers of new rights over land, including access at ground level. The NSC objects on the grounds that the rights sought would be incompatible with an operational railway. It seeks terms that would be appropriate when granted by NRIL for crossings of railway infrastructure by the Applicant's apparatus.

8.5.63 It is intended that the DCO application will be submitted to the Planning Inspectorate in June 2016. If consent is given, then it is anticipated that works would commence in late 2017 and the railway would be operational (and become part of NRIL's network) by 2019. The NSC seeks to have in place, either in the DCO or in an agreement outside of the DCO, protections for the land as if it was operational railway land. These protections also need to apply for maintenance following the reinstatement of the railway. NRIL supports the position of the Council in relation to protective provisions for the former Portishead railway line.

8.5.64 The draft DCO contains detailed protective provisions for the benefit of NRIL. This means that any interests NRIL might acquire in new operational railway and associated land would benefit from those protective provisions. However, given that the land is not currently operational railway land, the Applicant does not agree that the terms NRIL would ordinarily impose on crossings of existing railways would be appropriate, particularly where those terms relate to commercial matters or the allocation of risk associated with such a crossing.

8.5.65 The Applicant's Position Statement submitted at Deadline 7 [Doc 8.34.3] confirms that it agrees, and accepts, that the proposed development should accommodate the future re-opening of the railway and is in discussions with NSC to agree terms to achieve this. It would clearly be in both parties' interests that agreement is reached, as otherwise NSC might in future seek powers in respect of the Applicant's land interests, or the proposed development, when pursuing its own application for development consent.

8.5.66 Nonetheless, the Applicant states that where a new transmission line crosses existing operational railway, it is usually expected to bear the cost and risk associated with design compatibility. In contrast, where a new railway line crosses an existing transmission line, it would usually expect the railway developer to bear the cost and risk associated with design compatibility. The Panel does not consider that it would be reasonable or proportionate for the Applicant to meet the full costs associated with design compatibility for this land having regard to the stage that NSC's project has reached in the development consent process.

8.5.67 If the railway is built first, the protective provisions within the DCO would automatically operate for its protection, assuming the railway formed part of NRIL's network. However, if the railway is not built first, treating it as operational railway land at this stage would place a disproportionate burden on the Applicant in terms of the design and operation of the proposed development to accommodate the railway proposal together with the associated costs.

8.5.68 The Panel concludes that, in the light of the protective provisions that would be included in the recommended DCO for operational railway land, and the stage that the new railway project has reached in the development process, the powers under the DCO should not be restricted in the manner suggested by NSC. It is not necessary or appropriate to include new or additional protective provisions for the benefit of NSC, or the proposed railway within the DCO.

8.5.69 In reaching this conclusion, we have taken into account the fact that the new railway line would also be promoted as a nationally significant infrastructure project, and the public benefit associated with that scheme. We do not find that the matters raised would, in themselves,

preclude the exercise of the compulsory acquisition powers sought. We shall weigh them in the balance in our overall conclusions, later on in this chapter.”

Secretary of State’s Decision Letter dated 19 January 2016

...

“North Somerset Council

109. The Secretary of State notes that North Somerset Council raised an objection to the compulsory acquisition powers sought due to the impact it could have on an Nationally Significant Infrastructure Project (“NSIP”) application they are involved in promoting with regards to the re-opening of the Portishead to Parson Street, Bristol Railway line (“the Portishead Railway”). The Secretary of State notes that this is due to be submitted to the Planning Inspectorate in Q2 2016.

110. If re-opened it is intended that this scheme would become part of the National Rail network and subject to the terms of NRIL’s operating licence with the title of the track bed likely passing to NRIL. It was anticipated that should Development Consent for the Portishead Railway be granted, works would start on site in late 2017 and the railway would be operational by 2019. North Somerset Council therefore objected on the grounds that the acquisition rights sought would be incompatible with an operational railway. North Somerset Council requested that it be assumed that an operational railway is in place and that protective provisions be included in the Order or in an agreement put in place outside the Order accordingly. This position was supported by NRIL and by North Somerset District Council, Bristol City Council, South Gloucestershire District Council and Bath and North East Somerset Council (“the MetroWest Councils”) in a letter to the Secretary of State following the close of Examination.

111. The Applicant highlighted that the land in question is not currently operational railway land and that the terms NRIL would ordinarily impose on crossings of existing railway would not be appropriate. The Applicant noted that if the railway is built, the protective provisions within the Order would automatically apply for its protection assuming the railway formed part of NRIL’s network. However, if the railway is not built, such an assumption would place an unduly onerous burden on the Applicant who would be required to deliver their Development around a railway that would not exist and would be required to bear the associated costs.

112. In addition, the Applicant highlighted that where a new transmission line crosses existing operational railway, National Grid would usually be expected to bear the cost and risk associated with design compatibility. In contrast, where a new railway line crosses an existing transmission line, it would usually expect the railway developer to bear the cost and risk associated with design compatibility.

113. The ExA agreed with the Applicant that if the railway is built first, the protective provisions within the Order with regards to NRIL would automatically operate for its protection, assuming the railway formed part of NRIL’s network. However, if the railway is not built first, treating it as operational railway land at this stage would place a disproportionate burden on the Applicant in terms of the design and operation of the proposed development to accommodate the railway proposal together with the associated costs.

114. Whilst the Secretary of State notes the importance of promoting new infrastructure projects and that the Portishead Railway scheme has the support of the MetroWest Councils and the Local Enterprise Partnership, consideration has been given to the stage in the planning process at which the Portishead railway line application is at and whether the Order proposed would necessarily prevent the promotion of the railway project. The Secretary of State considers that it would be possible for a future DCO to vary an existing DCO, if necessary for the later project. That decision, though, is for consideration in the context of the later project, when all details of that later project are known. The Secretary of State agrees with the ExA’s conclusion that the powers in the Order should not be restricted in the manner suggested by North Somerset Council and that new or additional protective provisions in the Order are not necessary. Consequently, the

Secretary of State considers that the future promotion of the Portishead Railway scheme, and the need for that project to seek development consent under the Planning Act 2008, is not a sufficient reason to preclude the making of the current DCO as recommended in relation to this matter by the ExA.”