

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

**Planning Inspectorate reference TR040011**

**Interested party reference PORT-S57657**

**Note on behalf of First Corporate Shipping Limited trading as the Bristol Port Company (BPC) on BPC's oral case made at Compulsory Acquisition Hearing 2 on 3 March 2021**

1. This summarises the oral case made on behalf of The Bristol Port Company at Compulsory Acquisition Hearing 2 on 3 March 2021. This summary is in addition to other written evidence previously submitted to the Examining Authority.

**Protective provisions**

2. The Applicant's draft DCO included protective provisions for BPC, which focussed on controls over works rather than any other aspects of the DCO scheme. BPC undertook a detailed analysis of the entirety of the DCO proposals and powers and identified their potential impacts on the Port's undertaking and operations. This analysis demonstrated that the Applicant's suggested protective provisions were too narrow in their scope. BPC has provided the Applicant with the set of protective provisions which BPC requires as a result of its analysis, which provisions are outlined in BPC's written representation (REP2-064).
3. BPC's approach in preparing its required protective provisions was to build upon the protective provisions proposed by the Applicant and, in relation to other aspects of the powers sought in the draft DCO, to adopt provisions equivalent to those agreed with National Grid Electricity Transmission plc in relation to the Hinkley Point C Connection Project, which was similarly seeking extensive powers of compulsory acquisition and temporary possession over BPC's land. The agreed protective provisions are found in the National Grid (Hinkley Point C Connection Project) Order 2016 (SI 2016 No. 49) as amended by the National Grid (Hinkley Point C Connection Project) (Correction) Order 2017 (SI 2017 No. 786) and include a prohibition on the exercise of compulsory acquisition powers, including as to rights, and provisions to temper the exercise of the powers of temporary possession, including matters such as the need for programming of works.
4. BPC's key issues in formulating its required protective provisions are its need for control and knowledge as to what will be happening on its dock estate and how these activities will affect its undertaking, and hence its having the ability to plan accordingly so as to protect its operations and the interests of its customers.

**Plots 05/101, 102, 130, 131, 135, 136**

5. BPC needs control over the location of the bridleway proposed as Work No. 18 within the area of compulsory acquisition shown on the land plans. BPC would not accept a proposal that the bridleway could be located anywhere within that area since the chosen line of the bridleway could then render worthless other parts of the area. It is reasonable to require the Applicant to identify a narrow corridor and build only on that route. If an acceptable corridor could be identified, BPC's agreement to allow construction within it might be possible. The current route of Work No. 18 shown on the works plans is acceptable, provided no ancillary work such as planting or embankment extends beyond the current extent of work for Work No. 18.

6. BPC is willing to enter into a dedication agreement in relation to the bridleway being created as Work No. 18. BPC could not in any circumstances accept the exercise of compulsory acquisition powers over plots 05/101, 102, 130, 131, 135 and 136 which it holds as a statutory undertaker where there is an alternative in the form of a dedication agreement. The effect of the exercise of compulsory acquisition powers in those circumstances would be to create, in the middle of that land, a strip of land the undertaker did not own, which would be a serious detriment, in any sense of that word.

#### **Plot 05/75**

7. The form of the rights over plot 05/75 sought by the draft DCO, as set out in Schedule 10 to the draft DCO, are currently very undefined and would, if exercised to their fullest and without restriction, have a detrimental effect on the adjacent land, which is to be developed as a compound for the transit storage of cargo and will be held as part of BPC's statutory undertaking. Since the access would be immediately adjacent to this compound, the same concerns about the use of this access arise as have been expressed by BPC in relation to the use of the Marsh Lane perimeter track. Better definition to the right in Schedule 10 is needed to avoid those detrimental effects on the operation of BPC's undertaking in the immediately adjacent premises.
8. The Applicant has indicated that the actual need for the rights now relates only to access for maintenance visits to the cattle creep bridge and to the Easton-in-Gordano stream. This is a change from the position when the draft DCO was first prepared, when it was proposed that 05/75 would also be used in connection with the construction of Works Nos. 16B and 16D, which works are no longer to proceed. The form of the rights over 05/75 sought in Schedule 10 to the draft DCO has not been revisited to reflect this change.
9. The nature and purpose of the access actually required should also inform the extent of the land over which the right may be claimed. The current extent seems disproportionately large, given the more limited purpose for the access that has emerged, particularly the large area at the entrance to the access from Marsh Lane, and will reduce the developable area of the site. The extent of the land required should also be revisited in the light of the change in the required purpose of the access, particularly its no longer being required as a construction haul road, and in the light of the vehicles that would actually need to use it.
10. Clarity is also needed as to the purpose of the larger area of land over which rights are now sought at the eastern end of plot 05/85.

#### **Potential extinguishment of BPC's rights over plots 05/30, 61, 62, 65 and 70**

11. Plots 05/61, 05/62, 05/65 and 05/70 all form the immediate access between and around the field access to BPC's parcel 05/75 and the carriageway of Marsh Lane. The reason given by the Applicant in the Statement of Reasons for the acquisition of most of them is to enable access to 05/75. There is conflicting information as to whether the plots are existing highway, but some of the information available shows that they are. If they are highway, the reason given by the Applicant for needing to acquire them cannot and does not apply. If they are not highway, on the terms of the draft DCO their compulsory acquisition would extinguish BPC's private rights of access over them, which would not be acceptable to BPC.
12. The reason given in the Statement of Reasons for the acquisition of plots 05/30 and 05/65 is, in summary, the assembly of existing highway plots. Plot 05/30 is a large plot, which at its northern tip lies immediately adjacent to the entrance from Marsh Lane to the Port perimeter track (05/112). BPC's concern about the acquisition of this plot relates only to that part adjacent to the entrance. If the relevant areas of 05/30 and 05/65 are already highway no

further acquisition of rights is needed by the Applicant. If they are not then, as above, BPC must not lose the access rights that it currently enjoys over them.

**Plot 05/50**

13. BPC needs to retain ownership of at least part of plot 05/50 to provide access to an existing electronic communications code operator in connection with the maintenance of its mast sited on adjacent land. The access is needed in relation to a code agreement currently being negotiated; accordingly the issue is not covered by any protective provisions that may be in the draft DCO in relation to the interests of code operators.
14. The operator previously obtained access to its mast via the existing entrance to Court House Farm from Marsh Lane and then across what was previously a field up, to the mast. Now the Court House Farm land has been developed as a transit cargo storage compound, a different access must be used. The storage compound was built leaving an undeveloped strip on the eastern side, enabling this to be used as the access route for the operator, still utilising the existing entrance to Court House Farm from Marsh Lane.
15. BPC therefore requires to retain ownership of the strip, which forms part of plot 05/50. The unshaded area within plot 05/50 shown on the plan contained in BPC's responses to the Examining Authority's second written questions (REP5-048) indicates the area BPC needs to retain. This represents the area of plot 05/50 which is at ground level; the blue colouring indicates the area of the plot which comprises an embankment.
16. An alternative to the acquisition by the Applicant of the embankment area (shown coloured blue on the plan in REP5-048) would be for that land to be dedicated as highway, to the extent it is not already highway. BPC would agree to the inclusion in the relevant documentation of necessary rights of access for the local highway authority over the area shown unshaded on the plan in REP5-048 in connection with the maintenance of the embankment.