

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) in respect of compulsory acquisition matters dated 14 April 2021

1. This note sets out and explains BPC's objections to the powers proposed in the draft DCO in respect of:
 - 1.1 the proposed compulsory acquisition of all BPC's interests in:
 - 1.1.1 part Plot 5/50; and
 - 1.1.2 Plot 5/27 and Plots 5/101, 5/102, 5/130, 5/131, 5/135 and 5/137 (the **public path land**);
 - 1.2 the proposed compulsory acquisition of rights as set out in Schedule 10 to the draft DCO over:
 - 1.2.1 Plot 5/75 (and the proposed powers of temporary possession over that parcel);
 - 1.2.2 Plots 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55 (the **rail link land**) and the proposed powers of temporary possession over those parcels; and
 - 1.2.3 Plots 5/103 and 5/112;
 - 1.3 the extinguishment of BPC's rights over:
 - 1.3.1 plots 5/95, 5/100, 5/105, 5/122, 5/137, 5/140, 5/141, 6/10, 6/15, 6/20, 6/55, 6/60 and 6/80 (the **railway rights land**); and
 - 1.3.2 plots 5/30, 5/61, 5/62, 5/65 and 5/70 (the **highway access land**);
 - 1.4 the proposed powers of temporary possession in relation to:
 - 1.4.1 Plots 5/25, 5/95, 5/100, 5/105, 5/106, 5/112 and 5/113 and that part of parcel 5/28 which lies to the east of an imaginary line projected in a northerly direction across the disused railway at 126 miles 78 chains (the **Marsh Lane track land**), which includes BPC's private internal access road leading from Marsh Lane;
 - 1.4.2 Plots 5/103 and 5/170; and
 - 1.4.3 other parts of the Port estate to the extent that those powers might be used to create additional haul roads; and
 - 1.5 the suspension or overriding, during temporary possession or construction, of the rights of BPC and others to use the rail link land and the Marsh Lane track land.
2. BPC seeks protective provisions to ensure that the above powers do not apply or cannot be used other than with its agreement.

Statutory undertakers' land

3. BPC refers to and repeats paragraphs 4.1 to 4.4 of its written representation (REP2-064) and further refers to the note relating to its powers as statutory undertaker submitted at deadline 4

(REP-061). As described in those documents, all BPC's land within the Order limits was acquired by BPC or BPC's predecessor, Bristol Corporation, for the purpose of BPC's statutory undertaking and is now used by BPC for the purpose of that undertaking or is land in which an interest is held for that purpose.

4. All BPC's land within the Order limits is therefore land to which section 127(1) Planning Act 2008 applies, and hence is 'statutory undertakers' land' for the purpose of the application of section 127(2), (3) and (5). In its comments on BPC's written representation (REP3-036 BPC-D2-004) the Applicant agreed that in principle section 127(1) was engaged in relation to BPC's land.
5. As a result, the DCO may not authorise the compulsory acquisition of BPC's land within the Order limits or of any rights over that land unless the Secretary of State is satisfied that the land or right may be acquired without causing serious detriment to the carrying on of the undertaking or it can be replaced by (or the detriment caused by the right can be made good by) the use or acquisition of other land available to the undertaker.
6. BPC considers these tests cannot be met in relation to certain parts of its land within the Order limits. BPC accordingly objects to the powers of compulsory acquisition and temporary possession set out below and to the extinguishment of certain of its rights. BPC requires protective provisions to prevent the extinguishment of the relevant rights and to prevent the acquisition of the relevant land or rights or the exercise of the powers of temporary possession without its consent.

Land subject to compulsory acquisition of all interests

7. BPC objects to the proposed compulsory acquisition of the public path land and that part of Plot 5/50 which is not [the embankment to Marsh Lane] and accordingly requires a protective provision that the undertaker cannot exercise any powers of compulsory acquisition over that land without BPC's agreement: see BPC's proposed protective provisions paragraph 57(1)(a).

Plot 5/50

8. BPC refers to its comments and representations concerning this parcel at:
 - REP2-064 paragraph 4.18;
 - REP4-058;
 - REP5-048, paragraph 4; and
 - REP6-047 and REP6-052.
9. This parcel comprises in part a strip of flat land immediately adjacent to the security fence surrounding a compound used for the transit storage of imported vehicles, and in part land forming an embankment at the side of Marsh Lane. BPC needs to retain ownership of 5/50 except for the embankment. BPC needs this land because:
 - 9.1 it is required to provide access for an existing electronic communication operator to its adjacent mast. The relevant agreement between BPC and the operator is in the course of renewal. Before the construction of the storage compound, the operator was able to access its mast across the then undeveloped field. Now the compound has been developed, access is instead to be provided around the perimeter of the compound, within 5/50. If access were not be available over 5/50, the operator would require access to be given to it via the secure compound which would be an unacceptable interference with the security of the compound and its use; and

10. the land is also required to provide a buffer zone between the fence of the compound and any area which may be publicly accessible, for the reasons explained in REP4-058 (in relation to para 2.1.8 of BPC's written representation).
11. The reason stated by the Applicant for the acquisition of 5/50 (Statement of Reasons, REP6-014) is:
- "This land is all part of the existing highway but in fragmented ownership. The Applicant proposes to assemble the land in a single ownership and hold the land as highway authority to ensure that works to stabilise and maintain the bridge over the railway are not prevented. Thereafter North Somerset Council as highway authority will continue to maintain the highway and supporting structure."*
12. This is not a valid justification for the acquisition of the whole of 5/50.
- 12.1 No part of 5/50 is existing highway: see the plan of the extent of adopted highways provided by North Somerset Council as local highway authority in response to action point 11 arising from Compulsory Acquisition Hearing 2 (REP6-033).
- 12.2 Even if the reason for acquisition were otherwise correct, it would not be necessary for any part of 5/50 other than the embankment to be brought within the control of the local highway authority.
- 12.3 Sufficient control could be given to the local highway authority by dedication and adoption of the embankment area: there is no need for BPC to be permanently deprived of the ownership of its land.
- 12.4 The draft DCO enables the undertaker's powers (including those of compulsory acquisition) to be transferred to a third party and/or to be exercised by others, including Network Rail Infrastructure Limited (**NR**). There is no mechanism or control in the DCO to secure that in such a case the land within 5/50 (and other similar parcels) can nonetheless only become vested in the local highway authority or, even if the land were acquired by the Applicant, to secure that it would become adopted highway rather than remaining land generally in the Applicant's ownership.
13. If the part of 5/50 which does not form the embankment to Marsh Lane were compulsorily purchased by the Applicant, serious detriment would be caused to the carrying on of BPC's undertaking because of the disruption that would be caused to the use of, and the security of, the adjacent vehicle compound. There is no other land which would be available for BPC to purchase to replace the relevant part of 5/50.
14. In REP3-036 (BPC-D2-005) the Applicant confirmed that it was willing to remove part of 5/50 from the Order land for freehold acquisition (being the part BPC had stated in its written representation (REP2-064) para 4.10 was required to provide access to the mast) but no changes to the land plans or the book of reference were then pursued by the Applicant. The Applicant's commitment must instead be secured in the DCO through the protective provision proposed by BPC.

Plot 5/27

15. This parcel is described by Applicant in its response to BPC's written representations (REP3-036) as "scrub land". This description is inaccurate and demonstrates the Applicant's wider misunderstanding of the manner of use of BPC's land at Royal Portbury Dock (and see generally BPC's responses in REP4-058 in relation to the Applicant's comments on para 2.1.8 of BPC's written representation). The land in 5/27 currently lies to the side of the Marsh Lane

track and forms part of the areas used by the Port in connection with internal accesses, with ecological protection and with the security of its facilities.

16. BPC refers to its previous comments and representations about this parcel in:

- REP4-058 and REP4-059; and
- REP6-052

17. BPC objects to the compulsory acquisition of 5/27 for the following reasons.

17.1 Its acquisition would disproportionately interfere with and/or prevent any future change in the use or layout of, or the redevelopment of, that part of the Port estate, including any realignment of the public bridleway LA8/67/10 that might be proposed as part of that re-organisation. The effect of the acquisition would be to remove from BPC's freehold ownership a sliver of land in the middle of an area that could otherwise be re-used or redeveloped, thus preventing the re-use or redevelopment of the whole, whether economically or at all. There is a finite amount of land available to BPC for port use and development at Royal Portbury Dock and BPC faces considerable pressure at all times to make the best and most efficient use of it and to demonstrate that it is doing so. The compulsory acquisition of land such as 5/27 would inevitably prevent BPC using this area of land efficiently or at all, would hinder necessary development at the Port and so cause serious detriment to the carrying on of BPC's statutory undertaking. There is no other land which would be available for BPC to purchase to replace 5/27.

17.2 The reason stated by the Applicant for requiring the acquisition of 5/27 (Statement of Reasons, REP6-014) is "*Realignment of the existing permissive cycling route*". BPC does not agree that the proposed realignment of the cycling route is necessary but, as previously indicated, it is prepared to accommodate it. Since Work No. 16 will only be of any use if and for so long as the permissive cycling route along the railway to which it connects is also permitted to be used, it would not be appropriate for BPC nevertheless to be permanently deprived of its land to provide a path that is unnecessary and may become redundant.

17.3 The Applicant agrees that the cycle path to be created as Work No. 16 would be permissive only, not a permanent route (see, for example, the Applicant's response to BPC's written representations (REP3-036) and the Applicant's responses to ExQ2 TT.2.7 (REP5-028)). It is therefore plainly inappropriate for BPC to be deprived permanently of the land on which it is sited.

17.4 BPC has confirmed that it is willing to accommodate the execution of Work No. 16 on its land provided the path created is a permissive path only (see REP4-058). The acquisition of 5/27 is therefore not required given the availability of this alternative.

Plots 5/101, 5/102, 5/130, 5/131, 5/135 and 5/137

18. These parcels make up a large area of land on and surrounding the permitted extent of work for Work No. 18.

19. BPC refers to its previous comments and representations about these parcels in:

- REP2-064;
- REP4-058 and REP4-059;
- REP5-048; and
- REP6-047, RE6-048 and REP6-052.

20. BPC objects to the compulsory acquisition of these plots for the following reasons.
- 20.1 The reason stated by the Applicant for requiring the acquisition of them (Statement of Reasons REP6-014) is "*new bridleway*". The permitted extent of work for Work No. 18 is limited to the area shown with a green broken line on the works plans. The area proposed for acquisition greatly exceeds this. The proposed acquisition of those parts of these parcels which lie outside the extent of work is therefore excessive and cannot be justified by the execution of Work No. 18 under the DCO.
- 20.2 The parcels form part of the land to the south of the M5 acquired by Bristol City Council in connection with the development of Royal Portbury Dock: they are land in which BPC holds an interest for the purpose of carrying on its undertaking (see (REP4-061)). Other parts of the area to the south of the M5 have been developed as BPC's private railway. Remaining parts, such as these parcels, are held for the purposes of future development and/or are managed as ecological areas providing mitigation for developments elsewhere on the Port estate. Currently, these parcels form part of the Area East of M5 ecological area being managed under BPC's ecological management plans and as part of its statutory duties. If BPC were to be deprived of these parcels - or a strip within them of the Applicant's choosing - as proposed by the Applicant this would therefore have a detrimental effect on BPC's performance of its statutory duties and on its ability further to develop its estate.
- 20.3 It is not necessary for BPC to be deprived of its ownership of these parcels or of the route of Work No 18. If Work No. 18 is constructed its use as a public bridleway can adequately be secured by dedication agreement. BPC has repeatedly confirmed its willingness to enter into such an agreement (see REP4-058, REP4-059, REP5-048, REP6-047 and REP6-052), which is in accordance with the manner in which BPC itself created the existing PROWs on the Port estate. Given that alternative and confirmation, no compulsory acquisition of these parcels, with the consequent detriment to BPC's statutory undertaking, can be justified.

Land subject to the compulsory acquisition of rights

21. BPC objects to the proposed compulsory acquisition of rights in terms of Schedule 10 of the draft DCO over Plot 5/75, over the rail link land and over Plots 5/103 and 5/112 and accordingly requires a protective provision that the undertaker cannot exercise any powers of compulsory acquisition over that land without BPC's agreement: see BPC's proposed protective provisions paragraph 57(1)(b).

Plot 5/75

22. This parcel, and parcels 5/85 and 5/86, comprise a broad strip along the southern boundary of the railway between Marsh Lane and the Cattle Creep Bridge. The land of which they form part is safeguarded for port development: see REP2-038 response to ExQ1 GC.1.11. On 1 April 2021 BPC submitted a request to North Somerset Council for a screening opinion in relation to BPC's proposed development of the whole of the safeguarded area lying to the east of Marsh Lane for a proposed change of use to, and construction of, open storage areas for cargo in transit through Royal Portbury Dock (reference 21/P/1076/EA1). BPC's proposed development includes a vehicle access onto Marsh Lane and an ecological buffer along the northern boundary of the development (alongside the railway) to avoid disrupting foraging and commuting corridors for bats and to avoid impacts from artificial lighting on bat species and the hedgerows they utilise.
23. BPC objects to the proposed rights sought by the Applicant applying to the fixed corridor of 5/75 (and 5/85 and 5/86) because:

- 23.1 those rights will conflict with BPC's proposal for the ecological buffer and may conflict with BPC's design for the improvement of the access onto Marsh Lane; and
- 23.2 if an access must be provided over 5/75, 5/85 and 5/86, then the ecological buffer is likely to be required to be located further within BPC's development site, which will considerably reduce the land available for development.
24. The purpose of the right sought over 5/75, 5/85 and 5/86 was amended by the Applicant in the revised draft DCO submitted at deadline 6 (Schedule 10). The access right is now required only to facilitate the inspection and maintenance of two features on the railway land, being an accommodation bridge and associated walls, embankments and structures (which is located adjacent to Plot 5/86) and a culvert, watercourse and head wall (which is located at the northern end of the stream crossing 5/85). It is therefore not necessary that the access route to these features occupies the whole of broad strip along the northern boundary of the development site proposed and to impose such a right would be disproportionate given the detrimental effect this would have on BPC's development. Given the pressures on its land for development (see 17.1 above) any loss of developable land will constitute a serious detriment to BPC's ability to carry on its statutory undertaking.
25. Further, an alternative to the acquisition of the right in the form proposed by the draft DCO is available: access could be instead provided to each feature over a more convenient route or routes within the completed development which would be equally, or more, convenient for the user and which did not deprive BPC of its land for development. BPC would be willing to enter into an easement with the appropriate party on suitable terms to provide these alternative accesses.
26. For the reasons given in 23, BPC also objects to the exercise of rights of temporary possession over parcel 5/75. To the extent access is required during construction to the two features referred to in 24, if BPC is able to provide an adequate alternative route, those powers should not be exercised, as set out in paragraph 59(1)(b) of BPC's protective provisions.
- Plots 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55 (the rail link land) and Plots 5/103 and 5/112***
27. The rail link land comprises the track of BPC's private railway, including a level crossing at a point where it is crossed by internal, private dock access roads. The railway, and its operation, are part of BPC's statutory undertaking.
28. Plot 5/112 is BPC's private internal road leading from Marsh Lane to the level crossing on the railway. Plot 5/103 is an area of land under the deck of the M5 bridge.
29. BPC refers to its comments and representations concerning the rights sought over these parcels, and in particular as the lack of clarity as to the precise nature and terms of the rights required, at:
- REP2-064, particularly paragraphs 4.8 and 4.9;
 - REP3-046;
 - REP4-058; and
 - REP5-049.
30. In Schedule 10 of the draft DCO, the Applicant seeks various permanent rights over BPC's railway, and consequently rights to use Plots 5/112 and 5/103 as an access and turning circle in order to access the railway to exercise those rights. The rights are drafted in a broad and non-specific manner. The rights include:

- 30.1 to access the railway to install, inspect and maintain signalling and related communications equipment on it;
- 30.2 to alter the railway, including removing and replacing tracks;
- 30.3 to run rail vehicles (trains) of any description over the railway, and to use the level crossing to transfer road and rail vehicles onto the tracks; and
- 30.4 to use the Plot 5/112 as an access to the railway, which BPC understands includes the use of the defined area of Plot 5/103 as turning circle.
31. BPC engaged with the Applicant and subsequently with NR, seeking to better define the nature and extent of the rights sought and the terms on which the rights might be capable of being exercised without causing serious detriment to the carrying on of BPC's undertaking. While good progress has been made in those discussions, they have not reached the point where it is possible for NR to confirm to BPC the terms on which it would require access to and use of BPC's railway.
32. While BPC is optimistic that agreement can be reached with NR on the outstanding matters after the close of the Examination, in the absence of that agreement now, for the reasons given in the representations and comments referred to at 29 and below, BPC must maintain its objection to the proposed compulsory acquisition of the rights proposed by Schedule 10 over the rail link land, the track and the turning circle for the following reasons.
- 32.1 The right at 30.1 is unnecessary and, on the terms of Schedule 10, unacceptable. The installation of signalling and related equipment on BPC's railway should be limited to Work No. 19; further, undefined work should not be permitted. The construction of Work No. 19 is a matter for the powers of temporary possession under article 33 of the DCO, not a matter for which permanent rights are needed under article 27(1). In the normal way, adequate provision for NR to have access to BPC's property to inspect and maintain the signalling and related equipment is made by the connection agreement relating to the connection of BPC's railway to the network (of which connection the signalling equipment forms part).
- 32.2 The right at 30.2 is unnecessary and unacceptable. Once Work No. 1C has been completed as part of the authorised development (for which provision is made by the powers of temporary possession under article 33) no-one should have any rights to alter BPC's railway. No permanent right of alteration under article 27(1) is therefore required or acceptable.
- 32.3 BPC cannot accept the imposition of rights of the nature at 30.3 without appropriate restrictions as to the nature of the use, its frequency and the times at which the rights may be exercised. It is clear that NR's anticipates making greater use of the railway than has been the case under the ad hoc arrangements permitted by BPC to date, but no certainty has been provided to BPC as to the likely levels and patterns of use. It is patently the case that the wholly uncontrolled use of BPC's railway by NR as would be permitted by the terms of the proposed right in Schedule 10 would constitute a material interference with BPC's ability to operate the Port and a serious detriment to the carrying on of its undertaking.
- 32.4 The need for the right at 30.4 above is contingent on the acquisition and exercise of any of the rights at 30.1 to 30.3. For the reasons given, BPC objects to those rights, so that a right of access over the track is unnecessary. The proposed turning circle would also constitute an unacceptable impediment to BPC's ability to develop the land in the vicinity.
33. However, if suitable arrangements can be agreed with NR in respect of the rights required over the rail link land of the nature referred to in 30.3 and the manner of their exercise, BPC would

be willing to enter into an easement to record those rights and to provide appropriate rights of access over its land to enable their enjoyment.

34. For the reasons given in 32.3, BPC also requires the ability to control the exercise of rights of temporary possession over the rail link land. Those powers must therefore only be exercised with BPC's consent, as set out in paragraph 59(1)(a) of BPC's protective provisions.

Extinguishment of rights

35. BPC objects to the proposed extinguishment of its private rights over land belonging to third parties which would or might occur if that other land or rights over it were acquired by the undertaker, either compulsorily or by agreement. Accordingly BPC requires protective provisions to ensure that none of BPC's rights can be extinguished as a result of the DCO: see BPC's proposed protective provisions paragraph 58.

Plots 5/95, 5/100, 5/105, 5/122, 5/137, 5/140, 5/141, 6/10, 6/15, 6/20, 6/55, 6/60 and 6/80 (the railway rights land)

36. These parcels are variously proposed as areas subject to temporary possession, compulsory acquisition of all interests and compulsory acquisition of rights. As noted in the Book of Reference, BPC has the benefit of rights over these plots in relation to the operation and maintenance of its railway. These rights are therefore necessary in connection with BPC's statutory undertaking, and must in all cases and at all times be preserved.

Plots 5/30, 5/61, 5/62, 5/65 and 5/70 (the highway access plots)

37. These parcels are areas over which BPC requires continued access in connection with its adjacent land. Full details of the areas and BPC's concerns are set out in REP5-048 (paragraph 3) and were further explained in BPC's oral submissions at Compulsory Acquisition Hearing 2 (REP6-047, paragraphs 11 and 12).

38. These rights are therefore necessary in connection with BPC's access to and use of its land held and used as part of its statutory undertaking, and must in all cases and at all times be preserved.

Powers of temporary possession

39. BPC objects to the proposed powers of temporary possession in respect of Plot 5/75, the rail link land, the Marsh Lane track land and Plots 5/103 and 5/170. BPC accordingly requires a protective provision that the undertaker cannot exercise any powers of temporary possession in respect of that land without BPC's agreement or if BPC has failed to offer an alternative: see BPC's proposed protective provisions paragraph 59(1)(a) and (b).

40. BPC's concerns as to the proposed powers of temporary possession in respect of Plot 5/75 and the rail link land are set out above (at 26 and 34 respectively).

Plots 5/25, 5/95, 5/100, 5/105, 5/106, 5/112 and 5/113 and part Plot 5/28 (the Marsh Lane track land)

41. BPC has set out at length its concerns as to the proposed use of its private perimeter track as a major haul road for the DCO project. The parcels above comprise the current track and areas on either side of it, including all the land on the north side of the track up to the fences surrounding the Port's secure storage compounds. BPC refers in particular to its comments and representations in:

- REP2-064, in particular paragraphs 4.7 and 5.4 to 5.6;

- REP3-046;
 - REP4-058;
 - REP5-049; and
 - REP6-048, REP6-050 and REP6-052.
42. BPC notes the new Requirement proposed by the Examining Authority in relation to the physical condition and suitability of the Marsh Lane track (PD-017) and supports its inclusion in the DCO. However as outlined in its earlier representations, BPC's concerns in relation to the proposed use of the track are not confined to its condition. Other issues raised by BPC remain unresolved, including:
- 42.1 continuing uncertainty as to the extent and intensity of use of the track;
- 42.2 the use of the track of itself constituting a heightened security risk, by bringing large numbers of vehicles and their drivers in close proximity to the Port security fences;
- 42.3 the need for appropriate control over the nature and timing of the execution of works proposed to the track;
- 42.4 the need for careful liaison at all times with other users of the track (including National Grid Electricity Transmission PLC and other statutory undertakers);
- 42.5 the need for compliance with appropriate security measures: entrance to the track from Marsh Lane for vehicles is possible only through a locked security gate so arrangements are required to ensure the continued security of this access point during any use by DCO-related construction traffic;
- 42.6 the need for particular measures to be taken to prevent dust arising from operations on the track from damaging the valuable cargoes stored in the adjacent secure compounds; and
- 42.7 the extent of the area around the track that may be used for construction traffic and of vegetation that may be removed, taking into account the need to preserve the security and integrity of the adjacent compounds.
43. While many of these issues have been recognised by the Applicant, and some informal assurances given, the draft DCO currently does not contain any mechanism which would enable BPC to enforce the necessary controls on the various contractors which would be using the track. Unless use of the track is subject to appropriate and enforceable controls to restrict the areas that may be used and to require adherence to, among other things, necessary security and dust mitigation measures and to require proper liaison with other users, its use as envisaged by the DCO scheme would prejudice the continued safe and secure operation of the Port and the carrying on of BPC's statutory undertaking.
44. To deal with the issues identified above and in BPC's previous representations, BPC requires the powers of temporary possession in respect of the Marsh Lane track land are exercised only with its consent.

Plots 5/103 and 5/170

45. These parcels comprise the land under the deck of the M5 bridge which is proposed as the site of the M5 construction compound to be created as Work 16A.
46. BPC noted its objection to the proposed powers of temporary possession in respect of these parcels in its written representation (REP2-064), including at paragraph 5.10. Without appropriate controls being in place to ensure the area of the compound is suitably fenced and

in relation to the manner of certain operations within the compound BPC considers the presence of a compound established and operated solely under temporary possession powers will impair the security integrity of the Royal Portbury Dock estate and cause interference with port operations in the vicinity. It is not appropriate that BPC and its customers should merely have resort to a compensation claim for all damage caused by the undertaker and its contractors: instead BPC should have the benefit of obligations as to the proper operation of the compound which it may enforce to protect the continued ability for the Port to operate safely and securely and the carrying on of its statutory undertaking.

47. In order that appropriate obligations may be agreed and then enforced, BPC requires the right to require the use of these parcels as a compound to be governed by a lease, rather than through powers of temporary possession.

Other construction access

48. Except for any use of the Marsh Lane track to which BPC may agree, BPC objects to parts of the Port estate over which powers of temporary possession are sought being used as or to create additional haul roads.
49. BPC has explained the concerns that arise from the use of haul roads on the Port estate in relation to the proposed use of the Marsh Lane track. The same concerns would arise if the Applicant sought to create further haul roads elsewhere. There are no other areas on the Port estate within the Order limits which would be suitable for use for construction access, and, so far as BPC is aware, no further haul roads on the Port estate are proposed by the Applicant or required in connection with the DCO scheme other than the Marsh Lane track and any access that might be required during construction over Plot 5/75.
50. While BPC does not wish to prevent powers of temporary possession being exercised generally over its land (except in relation to the areas specified in 39) it needs to prevent those powers being used to create further haul roads. BPC therefore requires a protective provision in the form set out in paragraph 59(1)(c) of BPC's protective provisions.

Suspension and overriding of rights

51. If and to the extent BPC agrees to the exercise of temporary possession over the Marsh Lane track land and the rail link land, the undertaker's use of those areas and facilities cannot and will not be exclusive to the undertaker: the track on the Marsh Lane track land and the railway on the rail link land must continue to be available for use by BPC, its customers and other authorised users. If this were not the case, significant disruption would plainly be caused during construction of the scheme to the interests of BPC and its customers in relation to their use of the Port and in connection with the carrying on of BPC's statutory undertaking.
52. The Applicant has stated (in REP3-036, at BPC-D2-006) that it does not intend to use its Order powers to extinguish the rights of other parties to use the Marsh Lane track. As noted by BPC in REP4-058, this commitment should be secured in the DCO. It should also be extended to the rights of BPC and others to continue to use the Port's railway.
53. BPC therefore requires protective provisions in the form of paragraphs 57(2) and 59(2) of BPC's protective provisions.