

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 protective provisions required by BPC dated 14 April 2021

1. In its written representation (REP2-046) BPC set out its concerns about the significant adverse impacts the Applicant's proposed development would have on BPC's land, the conduct of its commercial port activities and the carrying on of its statutory undertaking. It set out, in section 6, the main protective provisions for BPC's benefit which needed to be included in the DCO to address those concerns.
2. Subsequently, BPC provided the Applicant with a full draft of the terms of the protective provisions required by BPC. Following discussions, BPC and the Applicant have been able to reach agreement on the inclusion in the DCO of most, but not all, of those provisions.
3. Attached to this note is a copy of the protective provisions required by BPC. In those provisions, paragraphs which BPC believes are not agreed by the Applicant are shown in bold text. To the best of BPC's belief, the rest of the protective provisions are agreed by the Applicant.
4. The table below sets out in relation to each provision:
 - the extent to which it is believed to be agreed; and
 - (whether agreed or not) the reason why the provision is necessary.
5. Throughout the table, reference is made to BPC's **CA note**. This is a reference to the note to the ExA submitted by BPC at deadline 7 in relation to compulsory acquisition matters.
6. The table also makes reference to the **NGET Protective Provisions**. This is a reference to the provisions for the protection of BPC contained in Part 5 of Schedule 15 to 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). BPC refers to its comments as to the relevance of this Order made at Compulsory Acquisition Hearing 2 (REP6-047).
7. 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 Port 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.
8. BPC's protective provisions assume that the new Requirement proposed by the Examining Authority in relation to the physical condition and suitability of the Marsh Lane track (PD-017) is included in the Order on the terms proposed. If that were not to be the case, BPC would require an additional protective provision for its benefit, on the terms of the proposed Requirement, but with the substitution of references to BPC in place of references to the relevant planning authority.

PART [5]

Protection for First Corporate Shipping Limited

Para	Provision	BPC commentary
49.	The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and BPC.	<p>Paragraph 49 is believed to be agreed by the Applicant and provides flexibility in the operation of this Part.</p> <p>Where it is agreed in relation to a particular matter or provision that BPC's consent, agreement or approval should not unreasonably be withheld or delayed, this has been expressly specified in the relevant provision.</p>
50. -(1)	<p>In this Part—</p> <p>"access works" means works—</p> <p>(a) on, over or under or otherwise affecting a private street or any public right of way on BPC's property, including the kerbs, splitter islands, footways, verges and carriageway of such street and any road markings, signing, signals, and other street furniture;</p> <p>(b) to alter, modify, improve, create or provide any means of access (whether temporary or otherwise) on or across BPC's property or to or from any private street or any other part of BPC's property or to or from any dock public road;</p> <p>(c) to alter the layout of any private street or any public right of way on BPC's property; and</p> <p>(d) to position or install plant or equipment on or over any private street or any public right of way on BPC's property,</p> <p>and includes, without limitation on the scope of the foregoing, any works under article 13 (street works and power to alter layout etc., of streets) or article 17 (access to works) in respect of or affecting any private street or any public right of way on BPC's property;</p> <p>"ancillary works" means embankments, earthworks, retaining structures or works, planting, landscaping or other mitigation, fencing and all other works falling within the descriptions of the further associated development set out in paragraphs (a) to (x) (inclusive) of Schedule 1;</p>	<p>These definitions are believed to be agreed by the Applicant, except for those shown in bold text, the inclusion of which is not agreed.</p> <p>To the extent any comment is required on these definitions, it is generally made in the context of the relevant paragraph where the definition is used.</p>

"BPC" means First Corporate Shipping Limited (registered company number 2542406), trading as The Bristol Port Company, being the statutory harbour authority and competent harbour authority for the Port;

"BPC's apparatus" means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water interceptors (and whether in all cases for drainage, gas, oil, water, electricity, telephone, television, data and information transmission or any other service) on BPC's property;

"BPC's property" means the whole and each of every part of all the leasehold and freehold land and rights and the benefit of all covenants, owned by or vested in BPC at Avonmouth, Chittening and Portbury—

(a) upon, across, under, over or in respect of or affecting which any powers conferred by this Order may be exercised; or

(b) upon, across, under or over which there is situated anything over or in respect of which any such powers may be exercised, and includes, without limitation on the scope of the foregoing, the Port's railway and any private street but does not include the Court House Farm terminable access;

"BPC's representative" means the person appointed by BPC from time to time to be its representative for the purposes of this Order;

"certified documents" means any and all of the plans and documents certified by the Secretary of State for the purpose of this Order;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"construction access rights" means any and all powers conferred on the undertaker by this Order to exercise temporary powers of access over any land with or without vehicles, plant and equipment including, without limitation on the scope of the foregoing, any ancillary powers to remove buildings and vegetation from that land and to construct works for the purpose of providing a means of access;

Although the Applicant does not agree to the inclusion of this definition in sub-paragraph 50(1), BPC believes the definition is agreed for the purposes of paragraph 74.

"Court House Farm easement" means a Deed of Grant of Easement dated 4 September 2017 made between Network Rail and First Corporate Shipping Limited t/a The Bristol Port Company;

"Court House Farm terminable access" means the existing crossing at grade over the disused Portishead Branch Line which is described in the Court House Farm easement;

"dock public road" means each of the streets known as Marsh Lane, Royal Portbury Dock Road (including the roundabout at its junction with Portbury Way and Gordano Way), Redland Avenue, Gordano Way, Garonor Way and Portbury Way to the extent that it is maintainable highway;

"drainage works" means works—

(a) to create, alter or remove any culvert or other crossing over, under or affecting any watercourse or drainage ditch on, over or under BPC's property or which drains water to or from BPC's property; and

(b) to make any opening or connection into any watercourse belonging to or used by BPC or to lay down, take up or alter any pipes for that purpose;

"environmental protection works" means measures reasonably required to be carried out on or in respect of Work No. 18 to protect the scrub environment and water bodies established and managed by BPC;

"highway access land" means any and all of parcels 5/30, 5/61, 5/62, 5/65 and 5/70;

"maintainable highway" has the same meaning as in section 86(1) of the 1991 Act;

"Marsh Lane track" means the private street referred to in Schedule 3 and there described as Access Road to the M5 Avonmouth Bridge east of Marsh Lane, Easton-in-Gordano;

"Marsh Lane track land" means any and all of parcels 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 and includes the Marsh Lane track;

"plans" includes sections, elevations, designs and design data, drawings, calculations, specifications, programmes, method statements, assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work;

"Port" means the port and harbour of Bristol;

"Port's railway" means the railway owned by BPC leading from Portbury Junction, Pill to the Royal Portbury Dock;

"powers of temporary possession" means the powers conferred by article 33 (temporary use of land for carrying out the authorised development);

"preparatory activities" means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works but excluding any such activities carried out under article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property;

"private street" means any street on BPC's property which is not a maintainable highway;

"public path land" means any and all of parcels 5/27, 5/101, 5/102, 5/130, 5/131, 5/135 and 5/136;

"rail link land" means any and all of parcels 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55;

"railway rights land" means any and all of parcels 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;

"relevant works" means that part of Work 1C that is on the Port's Railway and Works Nos. 14, 14A, 14B, 15, 16, 16A, 16C, 18, 19 and 20;

"specified work" means—(a) that part of Work 1C that is on the Port's railway;

The inclusion of sub-paragraph (c) of the definition of Specified Work is not agreed by the Applicant.

The definition is used in paragraph 63 to define the range of works for

<p>(b) the whole of Work Nos. 14, 14A, 15, 16, 16A, 16C, 18, 19 and 20;</p> <p>(c) all access works and drainage works; and</p> <p>(d) so much of all other parts of the authorised development and of any works to be carried out under the powers conferred by article 33 as is situated upon, across, under, over or within 5 metres of BPC's property, including all environmental mitigation and restoration measures;</p> <p>(2) In this Part—</p> <p>(a) references to the undertaker include references to any person to or in which any or all of the benefit of the provisions of this Order and any related statutory powers are transferred or are vested pursuant to any provision of this Order and any person which may by virtue of any agreement made pursuant to article 11 (agreements with Network Rail) whether alone or jointly with another exercise any or all of the powers contained in this Order;</p> <p>(b) references to numbered parcels are to the parcels of land so numbered in the book of reference;</p> <p>(c) references to a requirement to consult include that consultation must take place in good faith and in a timely manner with the provision of all reasonably necessary information and so that the party concerned must act reasonably in taking into account the reasonable comments made by the other party in response; and</p> <p>(d) references to BPC's consent, agreement or approval are to BPC's prior consent, agreement or approval given in writing.</p>	<p>to which BPC's approval, acting reasonably, is required. BPC considers it is reasonable for this range to include access works and drainage works, as defined, since these works all affect BPC's property or the watercourses it uses. It is not necessarily the case that all access works and drainage works will fall within sub-paragraph (d) the definition of specified works, since both definitions capture not only works that are part of the authorised development but also works which are carried out under other Order powers, such as articles 13 and 22. Sub-paragraph (c) is therefore necessary.</p> <p>Sub-paragraph (2) is believed to be agreed by the Applicant.</p> <p>Its content assists with general interpretation, ensures the commitments in the protective provisions made by the undertaker bind any person exercising the Order powers and ensures that where consultation is required under the terms of the protective provisions is it undertaken in a meaningful way.</p>
<p>51.-(1) Subject as set out in sub-paragraph (2), nothing in this Order affects—</p> <p>(a) any right of BPC to use the Court House Farm terminable access; or</p> <p>(b) the provisions of the Court House Farm easement or any other agreement relating to the Court House Farm terminable access</p> <p>and accordingly the following provisions of this Part of this Schedule do not apply as regards the Court House Farm terminable access.</p>	<p>Sub-paragraph (1) is believed to be agreed by the Applicant, apart from the opening wording in bold.</p> <p>Subject to that addition and the effect of added definitions, the provision is as proposed in the application draft DCO, paragraph 53.</p>

<p>(2) Despite anything contained in the Court House Farm easement or any other agreement relating to the Court House Farm terminable access, BPC's rights to use the Court House Farm terminable access under and in accordance with the Court House Farm easement or such other agreement must not terminate or cease to be exercisable before the date which is fifteen months after the approval date, and the Court House Farm easement and any such other agreement are modified accordingly.</p> <p>(3) In sub-paragraph (2), the "approval date" is the first date on which each of the Full Council of North Somerset Council, the West of England Joint Committee, the West of England Combined Authority Committee and The Secretary of State for Transport has confirmed in writing its approval under the Department for Transport WebTAG technical process for the appraisal of major transport schemes of the Full Business Case and the Final Approval Business Case in relation to the MetroWest Phase 1 proposals, including the authorised development.</p>	<p>Sub-paragraphs (2) and (3) are not agreed by the Applicant.</p> <p>BPC's note to the ExA submitted at deadline 7 (relating to the at-grade crossing at Court House Farm) in response to the ExA's request for information dated 29 March 2021 sets out why these provisions are suitable for inclusion in a development consent order, necessary to avoid serious detriment to the carrying on of BPC's undertaking, and proportionate.</p>
<p>52. The undertaker must give written notice to BPC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 10 (consent to transfer of benefit of order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—</p> <ul style="list-style-type: none"> (a) the nature of the application to be made; (b) the extent of the geographical area to which the application relates; and (c) the name and address of the person acting for the Secretary of State to whom the application is to be made. 	<p>Paragraph 52 is believed to be agreed by the Applicant.</p> <p>The provision mirrors that the Applicant has agreed with Network Rail Infrastructure Limited (NR) at paragraph 20 of Part 1 of Schedule 16 of the draft DCO.</p> <p>Like NR, BPC is a statutory undertaker whose land and, separately, the operation of its statutory undertaking will be affected by the exercise of the powers granted by the DCO. Like NR, it has a legitimate interest as to the identity of the person which would be exercising those powers. This provision enables BPC to make representations about any proposed transfer of those powers from the Applicant to another person.</p>
<p>53. -(1) No agreement made under article 11 (agreements with Network Rail) may authorise or permit the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of any powers and rights of Network Rail and the undertaker (as the case may be) under any BPC contract or affecting any of BPC's property.</p> <p>(2) In sub-paragraph (1), "BPC contract" means all and any contracts, licences, easements and other agreements, permissions and consents to which BPC</p>	<p>Paragraph 53 is believed to be agreed by the Applicant.</p> <p>It is necessary because article 11(2)(b), taken with article 11(3), would appear to enable, for example, NR to allow the Applicant to exercise contractual powers and rights held by NR under contracts made between NR and BPC and for the Applicant to allow NR to enforce the terms of consents granted by North Somerset District Council to BPC. This would be an unjustified interference with contractual and other</p>

is a party or of which it has the benefit.	established rights.
Watercourses and drainage	
<p>54.-(1) No part of any impounded dock at the Port is included within the definition of "watercourse" for any purpose of this Order.</p> <p>(2) The undertaker must not without BPC's consent (such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions) create any new discharges for water into any watercourse belonging to or used by BPC.</p> <p>(3) Without limitation on the scope of sub-paragraph (2), any consent given by BPC under this paragraph—</p> <p style="padding-left: 40px;">(a) may be given subject to reasonable conditions as to the quantities of water permitted to be discharged and as to the duration of any use of the relevant watercourse by the undertaker; and</p> <p style="padding-left: 40px;">(b) does not obviate the need for the undertaker to obtain any further consents required in relation to the activity concerned.</p> <p>(4) In the exercise of any power under article 22 (discharge of water), the undertaker must not damage or interfere with the bed or banks of any watercourse in, on, over or under BPC's property.</p>	<p>Paragraph 54 is believed to be agreed by the Applicant.</p> <p>It reflects paragraph 53 of the NGET Protective Provisions.</p> <p>Given the breadth of the power in article 22 it is necessary to ensure that Royal Portbury Dock cannot be used for the discharge of water since BPC controls the levels of water in this enclosed dock. The provision is also necessary to ensure that any new discharges proposed by the Applicant can be controlled so as to prevent the capacity of watercourses on or used by the Port being exceeded, with the risk of erosion, flooding and damage to ecological interests. Sub-paragraph (4) is necessary to protect and ensure the integrity of watercourses that are not main rivers.</p>
Surveys	
<p>55.-(1) The undertaker must not exercise the powers conferred by article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property—</p> <p style="padding-left: 40px;">(a) outside the Order limits except to the extent that BPC agrees for the purpose of carrying out non-intrusive surveys, investigations and monitoring only;</p> <p style="padding-left: 40px;">(b) other than to the extent that the exercise of such powers is necessary in connection with carrying out the authorised development; and</p> <p style="padding-left: 40px;">(c) other than by prior agreement with BPC on each and every occasion, such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions,</p>	<p>Paragraph 55 is believed to be agreed by the Applicant.</p> <p>It reflects paragraph 54 of the NGET Protective Provisions.</p> <p>It provides BPC with necessary certainty as to the land which may be affected by surveys and the times access may be required, enabling BPC to ensure that disruption to the safe and efficient operation of the Port is kept to a minimum, that the security of the Port is preserved and that those carrying out surveys are sufficiently resourced to meet any liabilities they may incur.</p>

<p style="text-align: center;">and on at least 14 days' notice.</p> <p>(2) When requesting BPC's agreement to access under sub-paragraph (1) the undertaker must provide to BPC full details of the property to which access is requested, the activities proposed (including risk assessments and method statements and intended duration of the activities), the identity of the persons who would undertake them and any apparatus that might be left on the affected property.</p> <p>(3) BPC is, without limitation on the scope of sub-paragraph (1)(c)—</p> <p style="padding-left: 40px;">(a) entitled to refuse access as requested by the undertaker on any occasion for operational reasons, in which case BPC must act reasonably and without delay in seeking to offer alternative arrangements; and</p> <p style="padding-left: 40px;">(b) entitled as a condition of its agreement on any occasion to require the production of evidence of the existence of adequate insurance with insurers of repute, the proceeds of which will be available to cover all liability, costs, claims, expenses and demands which may arise as a result of that access.</p> <p>(4) The undertaker must remove any equipment left on, over or under BPC's property as soon as reasonably possible after completion of the relevant surveys and investigations.</p> <p>(5) The undertaker must, at its own expense, deliver to BPC as soon as reasonably practicable after their production on a non-reliance basis copies in an electronic format of all survey and ground investigation reports carried out in respect of BPC's property under the powers conferred by article 23 or the powers conferred by section 11(3) of the 1965 Act as applied by this Order, which reports BPC may use and provide to others (on a non-reliance basis) free of cost in connection with works and operations at the Port.</p>	
<p>Streets, access and public rights of way</p>	
<p>56-(1) The undertaker must not in carrying out any works or exercising the powers conferred by this Order cause pedestrian or vehicular access to or across any of BPC's property (including access for cargo operations but excluding access over the Court House Farm terminable access) to be interfered with or obstructed, other than with the consent of BPC, not to be unreasonably withheld or delayed, or, if the carrying out of works or exercising the powers</p>	<p>Sub-paragraph (1) is believed to be agreed by the Applicant.</p> <p>The provision ensures that, where a specific control is not imposed by subsequent sub-paragraphs of paragraph 56, as operator of the Port BPC has the right to approve, acting reasonably, the proposed exercise of powers which might affect access over its private roads on</p>

<p>relate to a dock public road, unless the undertaker has first consulted with BPC.</p> <p>(2) Without limitation on the scope of sub-paragraph (1) the undertaker must not exercise any powers under—</p> <ul style="list-style-type: none"> (a) article 13(1) (street works and power to alter layout etc., of streets) in respect of or so as to affect the Marsh Lane track other than by prior agreement with BPC such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions; (b) article 13(1) in respect of or so as to affect any dock public road unless it has first consulted with BPC; or (c) article 13(2) in respect of or so as to affect any private street on any part of BPC's property. <p>(3) With the exception of the locations specified in columns (1) and (2) of Schedule 7 and shown on sheet 5 of the compounds, haul roads and access to works plan as AW5.1 (access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch railway line) and AW5.3 (access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch railway line) the undertaker must not pursuant to any powers in this Order carry out any works to create or improve any means of access affecting any private street or any public right of way on BPC's property or any other part of BPC's property or any dock public road.</p>	<p>the Port estate and the right to be consulted where the exercise of those powers may affect access over one of the various public roads which serve Royal Portbury Dock (which are listed by way of definition in sub-paragraph 50(1)).</p> <p>These public roads play an important role in the smooth flow of traffic to, from and around the Port and BPC therefore has a legitimate interest in any proposals that may affect their use.</p> <p>The provision would apply, for example, to the proposed exercise of powers under article 46(2) (traffic management) which may be exercised in respect of any road, not only roads within the Order limits.</p> <p>This provision, and other provisions in paragraph 56, reflect similar controls in the NGET Protective Provisions, paragraph 52.</p> <p>Sub-paragraph (2) is believed to be agreed by the Applicant.</p> <p>The provision ensures BPC's approval is required to street works on its private perimeter track (which would otherwise be permitted without that approval).</p> <p>It also ensures that the undertaker cannot use powers under the Order to alter the layout of any other private way on BPC's property which falls within the Order limits, and that the undertaker must consult with BPC in relation to any proposed layout changes affecting Royal Portbury Dock Road and Marsh Lane (being the dock public roads within the Order limits).</p> <p>Sub-paragraph (3) is believed to be agreed by the Applicant.</p> <p>Subject to the availability of the relevant powers of temporary possession, this provision permits the creation of the two accesses envisaged by the DCO scheme, but otherwise prevents the use of Order powers to create new accesses onto any private street or way on BPC's property or any dock public road.</p>
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<p>(4) In carrying out any access works, the undertaker must not so far as reasonably practicable interfere with or obstruct the free, uninterrupted and safe use by other traffic of any street or interfere with street furniture, signage and lighting masts.</p>	<p>Sub-paragraph (4) is believed to be agreed by the Applicant.</p> <p>This is a reasonable provision regulating work to streets and accesses, to preserve their continued and safe use. It reflects the NGET Protective Provisions, paragraph 52(4).</p>
<p>(5) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under article 15(1) (temporary stopping up of streets and public rights of way) in respect of—</p> <p>(a) the Marsh Lane track (except to the extent permitted by article 15(5)) or any other any other private street; or</p> <p>(b) Royal Portbury Dock Road without BPC's consent, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.</p>	<p>Sub-paragraph (5) is believed to be agreed by the Applicant.</p> <p>Article 15(1) would permit any private street on BPC's land within the Order limits, including the Marsh Lane perimeter track, to be stopped up. It is accepted that the bridleway over the perimeter track will (and must) be stopped up during construction, but it is not intended that the undertaker would have the power also to stop up the use of the track by other users, such as BPC and its customers, nor to stop up any other private way on BPC's property. Sub-paragraph (a) is necessary to control the use of article 15(1) accordingly.</p> <p>Royal Portbury Dock Road is the main access road in and out of Royal Portbury Dock. It is reasonable and proportionate that BPC's approval, acting reasonably, is required in respect of any proposal that it be stopped up, as provided by sub-paragraph (b).</p>
<p>(6) Despite any provision in this Order, the undertaker must not, except with the agreement of BPC, exercise any power under article 15 or article 46 to use or to authorise the use of any private street or any dock public road or any public right of way on BPC's property as a temporary working site or as a parking place.</p>	<p>Sub-paragraph (6) is believed to be agreed by the Applicant.</p> <p>It is necessary in the interests of good management of, and security of, the Port estate and reflects paragraph 52(7) of the NGET Protective Provisions.</p>
<p>(7) The undertaker must exercise the power granted to it under paragraph (5) of article 15 to stop up public rights of way LA8/67/10 and LA/8/68/10 to the extent specified in column (3) of Part 2 of Schedule 5 (Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension), throughout the period of operation or use of the Lodway Farm construction compound to be constructed as Work No. 17 and the temporary construction compound located under the M5 Avonmouth Bridge.</p>	<p>Sub-paragraph (7) is believed to be agreed by the Applicant.</p> <p>While it is intended that the public rights of way specified in the provision are stopped up during construction, and powers are to be granted by the DCO to that effect, the draft DCO imposes no requirement that the stopping up is effected. As owner and occupier of the land over which the PROWs pass, BPC would not want the anticipated construction and construction traffic activities envisaged to occur unless the public rights of access had first been excluded, due to the likelihood of conflicts in this use and the risk of potential liability attaching to BPC.</p>
<p>(8) The undertaker must, before submitting any survey, proposed measures or strategy relating to the Marsh Lane track to the relevant</p>	<p>Sub-paragraph (6) is not agreed by the Applicant.</p> <p>This provision assumes that the new Requirement proposed by the</p>

planning authority for approval in accordance with requirement [X] in Schedule 2, consult with BPC in relation to the content of all such surveys, measures and strategies.

(9) **Despite any other provision of this Order, no part of Work No. 16 or Work No. 18 (including the right of way to be to be constructed by the undertaker pursuant to article 16(3) and described in Part 2 of Schedule 6 (Bridleways, cycle tracks and footpaths) as a bridleway between points B1 and B2 shown on Sheet 5 of the new highways plan) is or will become open for use by any person or a public right of way or other highway except with the agreement of BPC.**

(10) Despite paragraphs (1) and (2) of article 19—
(a) any street constructed under this Order on BPC's property; and
(b) the altered or diverted part of any street altered or diverted under this Order on BPC's property

must be maintained by and at the expense of the relevant highway authority at all times from its completion.

Examining Authority in relation to the physical condition and suitability of the Marsh Lane track (PD-017) is included in the Order on the terms proposed. BPC supports that Requirement, but considers that, given its ownership and use of the track and legitimate interest in its condition, it is reasonable that BPC is involved in the surveys and development of the Strategy envisaged by the Requirement. BPC therefore requires to be consulted by the undertaker before the relevant submissions required by the Requirement are sent to the local planning authority for approval.

As noted above, if the proposed new Requirement were not to be included in the DCO on the terms currently proposed, instead of the protective provision proposed as paragraph 56(8), BPC would require an additional protective provision for its benefit, on the terms of the proposed Requirement, but with the substitution of references to BPC in place of references to the relevant planning authority.

Sub-paragraph (9) is not agreed by the Applicant.

For the reasons given in BPC's CA note, BPC objects to the proposed compulsory acquisition of its land which would be the site of Work No. 16 and Work No. 18. That being the case, this provision is also required to ensure that the Order - including provisions such as article 16(3) - cannot and must not take effect so as to impose public rights of way over that land without BPC's agreement.

Sub-paragraph (10) is believed to be agreed by the Applicant.

This provision is necessary to give effect to the Applicant's acceptance that all new public paths (temporary or permanent) to be created on BPC's land must be maintained by the local highway authority, and not by BPC.

All such paths will constitute streets within the meaning of the DCO and article 19. Absent this protective provision the effect of article 19 would be that, after the initial 12 month maintenance period, BPC would become responsible for maintenance of the paths (Works Nos. 15, 16 and 20) which are to be permissive paths, a street authority for them (see the definitions of "street authority" and "street manager" in the 1991 Act). In relation to Work No 18, assuming this is dedicated by BPC, the intention is that maintenance would at all times be a

<p>(11) If the undertaker acquires, whether compulsorily or by agreement, any of BPC's property within the Order limits, or any right or interest in or over such property, which property is subject to a public right of way, from the date of the acquisition of the relevant land, right or interest or from the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act (power of entry), whichever is the earlier, any liability or responsibility of BPC to the relevant highway authority for or in respect of the maintenance of that public right of way is extinguished and that public right of way shall after that date instead be maintained by and at the expense of the relevant highway authority.</p> <p>(12) Without limitation on the scope of any other provision in this Part if any damage to any public right of way on BPC's property is caused in the exercise of any powers under this Order or by carrying out of, or in consequence of the construction of, any works under this Order, the undertaker must make good such damage and pay to BPC all reasonable expenses to which BPC may be put by reason of any such damage.</p> <p>(13) The undertaker must not exercise any powers under article 13, article 15 or article 46 (traffic regulation) over or in respect of any part of BPC's property or any dock public road after completion of construction of the authorised development.</p>	<p>matter for the local highway authority, and not for the undertaker.</p> <p>Sub-paragraph (11) is believed to be agreed by the Applicant.</p> <p>If the undertaker acquires land which is a public right of way in respect of which BPC was, under the applicable dedication agreement, responsible for maintenance it is reasonable that BPC is then released from that maintenance responsibility. This would be the case, for example, in relation to parts of the bridleway at Royal Portbury Dock Road.</p> <p>Sub-paragraph (12) is believed to be agreed by the Applicant.</p> <p>It is reasonable that any damage caused to PROWs on BPC's property is made good promptly, to avoid danger to users and the consequent risk of liability for BPC.</p> <p>Sub-paragraph (13) is believed to be agreed by the Applicant.</p> <p>The draft DCO does not impose any restriction on the period during which the powers in articles 13, 15 and 46 may be exercised. Article 46, in particular, permits the relevant powers to be used in connection with the "maintenance" (as defined) of the development.</p> <p>So far as BPC's property and the dock public roads are concerned, BPC needs the certainty that once construction has been completed, the powers may no longer be exercised.</p> <p>The provision reflects paragraph 52(8) of the NGET Protective Provisions.</p>
<p>Acquisition and use of land</p>	
<p>57.-(1) The undertaker must not exercise the powers conferred by—</p> <p>(a) article 24 (compulsory acquisition of land) or article 31 (acquisition of subsoil or air-space only) over or in respect of the public path land or any part of parcel 5/50 which is not part of the embankment supporting Marsh Lane;</p>	<p>Sub-paragraph (1) is not agreed by the Applicant.</p> <p>BPC's CA note sets out why sub-paragraphs (a) and (b) are necessary.</p> <p>Article 27(2) is imprecise as to the terms of the covenants that could be imposed and the extent of the land which they could affect. The</p>

<p>(b) article 27 (1) (compulsory acquisition of rights or imposition of covenants) over or in respect of the rail link land or any of parcels 5/75, 5/103 and 5/112;</p> <p>(c) article 27(2) over or in respect of any of BPC's property;</p> <p>(d) article 32 (rights under or over streets) over or in respect of any private street; or</p> <p>(e) article 34 (temporary use of land for the purpose of maintaining the authorised development) over or in respect of any of BPC's property,</p> <p>unless the exercise of such powers is with the consent of BPC.</p>	<p>imposition of any covenants limiting the use of land would constitute an unacceptable restriction on the use of BPC's statutory undertakers' land. Nor has BPC been made aware that the Applicant needs to impose restrictive covenants on the use of BPC's land pursuant to article 27(2). In the absence, therefore, of any demonstrable need for them, sub-paragraph (c) is necessary to ensure those covenants could not be imposed without BPC's consent.</p> <p>The Applicant has not demonstrated why the powers in article 32 would be required in connection with the authorised development. The Statement of Reasons also provides no explanation. Specific powers are sought in the Order in respect of BPC's private street, the perimeter track leading from Marsh Lane. It is not acceptable that the undertaker may seek (unexplained) powers and rights over other private streets on BPC's property. Sub-paragraph (d) is necessary to ensure such powers could not be exercised without BPC's consent.</p> <p>BPC does not accept that the rights in article 34 should be exercisable in relation to its land. To the extent access rights are required in relation to the maintenance of the DCO development once constructed, necessary provision should have (and has) been made through the powers of compulsory acquisition of rights. It would cause unacceptable disruption to the operation of the Port, its future development and the carrying on of BPC's undertaking if, at times of its choosing, the undertaker could again demand possession of any land in the Order limits for its use for an unspecified time. Sub-paragraph (e) is necessary to ensure such powers could not be exercised without BPC's consent.</p>
<p>(2) Except to the extent BPC may agree, article 28(3) (Private rights over land subject to compulsory acquisition or temporary possession), article 29 (power to override easements and other rights) and article 37 (statutory undertakers and electronic communications code operators) shall not apply in relation to any interest, right or restriction the benefit of which is vested in BPC or any other person affecting the rail link land or the Marsh Lane track land or in relation to any interest, right or restriction the benefit of which is vested in BPC affecting any of BPC's property or the railway rights land or the highway access land.</p>	<p>Sub-paragraph (2) is not agreed by the Applicant.</p> <p>Article 28(3) (as supplemented in the case of certain statutory undertaker rights by article 37) and article 29 enable private rights to be suspended or overridden during the exercise of powers of temporary possession and in the construction of the DCO development.</p> <p>BPC's CA note sets out why this provision is necessary in relation to the Marsh Lane track land and the rail link land.</p> <p>BPC's CA note also explains why its rights over the railway rights land</p>

	<p>and the highway access land must be preserved. This requirement applies as much during any temporary possession or in the construction of the development as it does following the acquisition of the land or rights over it. The Applicant has not explained why it might be necessary to interrupt these rights.</p> <p>This provision is therefore required to protect the interests of BPC and its customers in connection with the carrying on of BPC's statutory undertaking during construction of the scheme.</p>
<p>58. -(1) The undertaker must not exercise the powers conferred by section 271 (extinguishment of rights of statutory undertakers: preliminary notices) of the 1990 Act in relation to:</p> <p>(a) any rights of BPC over or in respect of the railway rights land or the highway access land; or</p> <p>(b) any of BPC's apparatus.</p> <p>(2) Despite any other provision of this Order, if the undertaker acquires any interest in the railway rights land or the highway access land, whether compulsorily or by agreement, no rights of BPC over or in respect of the railway rights land or the highway access land so acquired must be extinguished.</p>	<p>BPC believes sub-paragraph (1) is agreed by the Applicant so far as it relates to BPC's rights in the railway rights land but not otherwise.</p> <p>Section 271 of the Town and Country Planning Act permits the extinguishment of the rights of statutory undertakers relating to apparatus in land, where the land is acquired compulsorily by an acquiring authority which is a local authority or statutory undertaker.</p> <p>BPC's CA note explains why BPC's rights over the railway rights land and the highway access land must be preserved. This provision is therefore necessary to prevent certain of those rights being extinguished other than under the powers of the DCO.</p> <p>BPC believes sub-paragraph (2) is agreed by the Applicant so far as it relates to BPC's rights in the railway rights land but not otherwise.</p> <p>Articles 28(2) and (3), taken with article 37, have the effect of extinguishing private rights held over Order land which is acquired or over which rights are granted, whether compulsorily or by agreement.</p> <p>BPC 's CA note explains why BPC's rights over the railway rights land and the highway access land must be preserved. This provision is therefore necessary to prevent certain of those rights being extinguished by the operation of the DCO.</p>
<p>Use of land and execution, maintenance and use of the authorised development</p>	
<p>59. -(1) Despite any provision in this Order or anything shown on the land plan, the undertaker must not except with the agreement of BPC—</p> <p>(a) exercise any powers of temporary possession over or in respect of the Marsh Lane track land or the rail link land or parcels 5/103 and 5/170; or</p>	<p>Sub-paragraph (1) is not agreed by the Applicant.</p> <p>BPC's CA note sets out why each of sub-paragraphs (a), (b) and (c) is necessary.</p>

<p>(b) (exercise any powers of temporary possession over or in respect of parcel 5/75 or (if and to the extent they form part of BPC's property) parcel 5/85 or parcel 5/86 unless BPC fails, within 14 day of a request by the undertaker, to make available for exercise by the undertaker in substitution for the exercise of the relevant powers temporary rights of access over other land which are sufficient (whether alone or in conjunction with the exercise by the undertaker of other powers under this Order) to enable the undertaker to gain access in connection with the construction of the authorised development, with such vehicles, plant and equipment as may be necessary, from access point AW5.3 shown on the compounds, haul roads and access to works plan to the accommodation bridge (and associated walls, embankments and structures) on land adjacent to parcel 05/86 and to the culvert, watercourse and head wall situated on land adjacent to parcel 05/85; or</p> <p>(c) (other than any construction access rights which may be authorised by or pursuant to the terms of this Order over the Marsh Lane track or parcel 5/75), exercise any construction access rights over BPC's property or otherwise use any part of BPC's property for the purpose of gaining access to any part of the authorised development or to any other land or in connection with the construction or maintenance of the authorised development.</p> <p>(2) Any exercise of powers of temporary possession by the undertaker in respect of the rail link land or the Marsh Lane track land which may be permitted pursuant to the terms of this Order is subject to, and in common with, the use of the rail link land and the Marsh Lane track land by BPC and by any other person acting with BPC's authority or which may have rights to use the rail link land and the Marsh Lane track land.</p>	<p>Sub-paragraph (2) is not agreed by the Applicant.</p> <p>See above in relation to paragraph 57(2) and BPC's CA note as to the reason why this provision is necessary. The undertaker's possession of the rail link land and the Marsh Lane track land must be in common with others entitled to use those facilities, including BPC, so that the undertaker must not be entitled to exclude BPC or those others from their use.</p>
<p>60.(1) If required to do so by BPC (acting reasonably), the undertaker must at its cost and expense procure that surveys are carried out to a specification approved by BPC (acting reasonably) to show the condition of any land of which temporary possession is taken under article 33 (together with all associated structures) before the undertaker's use of it begins and after that use ends.</p>	<p>Paragraph 60 is believed to be agreed by the Applicant.</p> <p>It enables BPC and the undertaker to establish the condition of land before and after temporary possession. In addition to the undertaker's obligations to hand back the land in an appropriate condition at the end of the possession, it is reasonable that it makes good damage immediately where failure to do so might prejudice safety or security,</p>

<p>(2) The undertaker must promptly after receipt of reasonable demand by BPC and at the undertaker's cost and expense make good any and all damage and wear and tear caused to any part of BPC's property which is used by the undertaker in connection with the construction or maintenance of the authorised development where in BPC's reasonable opinion the rectification of such damage, wear or tear is necessary in the interests of safety or security.</p> <p>(3) If required to do so by BPC (acting reasonably), the undertaker must permit BPC to inspect the execution of all works of rectification being carried out under this paragraph in order to ensure compliance by the undertaker with the requirements of this paragraph.</p>	<p>particularly in relation to shared facilities such as the Marsh Lane track and the Port's railway.</p> <p>The provision reflects (but is less onerous than) paragraphs 55(2) to (4) of the NGET Protective Provisions.</p>
<p>61. -(1) The undertaker must present to BPC not less than three months before the intended date of commencing construction the draft programme for the execution of each part of the authorised development on BPC's property.</p> <p>(2) The undertaker must consult with BPC in relation to the draft programme and must present its final programme for the execution of the authorised development on BPC's property to BPC not less than four weeks before the intended date of commencing construction.</p> <p>(3) The undertaker must not enter on or take temporary possession of any part of BPC's property unless it has served at least 14 days' written notice on BPC of its intended entry onto that part.</p> <p>(4) In this paragraph "intended date of commencing construction" means the first date on which the undertaker wishes to commence construction of any part of the authorised development on, under or over any part of BPC's property, including carrying out any preparatory activities.</p> <p>(5) In the exercise of any powers of temporary possession in respect of any part of BPC's property and in the commencement and execution of the authorised development on BPC's property the undertaker must—</p> <p style="padding-left: 40px;">(a) proceed diligently with the works affecting each part of BPC's property; and</p> <p style="padding-left: 40px;">(b) notify BPC in writing of the completion of the relevant part of the authorised development affecting each part of BPC's property within fourteen days of its completion.</p>	<p>Sub-paragraphs (1) to (5) (inclusive) of article 61 are believed to be agreed by the Applicant.</p> <p>A significant amount of BPC's land is affected by proposed powers of temporary possession, not merely a small, individual parcel. BPC needs as much clarity and certainty as is reasonably practicable as to when the various parts of its Port estate may be required, and for how long, so that it can make arrangements necessary to secure premises and remove any cargo or other items that may be on the relevant land and warn other Port users and customers who will be affected, so that they can make suitable arrangements.</p> <p>The provisions reflect, although are less onerous than, those in paragraphs 57, 58 and 59 of the NGET Protective Provisions.</p>

<p>(6) In the exercise of any powers of temporary possession in respect of any part of BPC's property the undertaker must not—</p> <ul style="list-style-type: none"> (a) except with the agreement of BPC, provide or authorise the provision of car parking or storage (for materials or other items) facilities on any part of BPC's property other than within Work No. 16A; (b) demolish or remove any buildings; or (c) except as BPC agrees, construct or carry out on BPC's property any works comprising fencing, any mitigation works, ground or rock stability, geotechnical or strengthening works other than works which are of a temporary nature. <p>(7) In addition to and without limitation on the scope of the undertaker's other obligations under this Order (including those in article 33(4) and Schedule 2), before giving up possession of any part of BPC's property in respect of which any powers of temporary possession have been exercised the undertaker must remove any works constructed in contravention of sub-paragraph (6) or paragraph [62].</p>	<p>Sub-paragraphs (6) and (7) are believed to be agreed by the Applicant.</p> <p>These paragraphs provides necessary assurances to BPC as to use that will be made of the areas of the Port estate that are subject to powers of temporary possession and that they will be handed back to BPC free of unexpected, permanent works (see also paragraph 62 below).</p>
<p>Works</p>	
<p>62. -(1) Despite any provision of this Order or anything shown on the certified documents except as BPC may agree—</p> <ul style="list-style-type: none"> (a) no part of Work No. 14 or any ancillary works associated with Work No. 14 must be constructed or maintained on parcel 04/55; and (b) other than works of a temporary nature, no ancillary works associated with any relevant works or with Work No. 1A or Work No. 1B must be constructed or maintained upon, across, under or over any of BPC's property of which only temporary possession is taken under this Order or over which the undertaker does not, under this Order, acquire rights authorising the retention of those ancillary works. 	<p>Sub-paragraph (1)(a) is believed to be agreed by the Applicant.</p> <p>As pointed out by BPC in REP2-046 (paragraph 4.13) the permitted extent of Work No. 14 extends onto land within Plot 4/55 which is an area of over which only powers of temporary possession should be exercised. This is not appropriate since it would authorise the construction of a permanent, main work on land over which the undertaker had acquired no permanent rights. Sub-paragraph (a) corrects that position.</p> <p>Sub-paragraph (1)(b) is believed to be agreed by the Applicant, except for the addition of the words in bold.</p> <p>Article 5 authorises the carrying out of the authorised development anywhere within the Order limits. The authorised development includes not only the numbered Works but the long list of other works set out paragraphs (a) to (x) of Schedule 1. These other works are what are defined in these protective provisions as the "ancillary works" and include both temporary and permanent works. To the extent they</p>

	<p>are permanent works, there is no limit on where they may be constructed. Article 33(1)(d) combined with article 33(4)(b) would then permit those works to remain even if the undertaker had secured no permanent interest in the land.</p> <p>BPC needs to know and to control where on its statutory undertakers' land permanent works are to be constructed. It has reviewed the works plans and (subject to sub-paragraph (1)(a)) is willing to accept the Works noted on them to being constructed on its land within the relevant extent of works, subject to its approval of the detailed plans of those works under paragraph 63. Other, permanent works must not be constructed.</p> <p>Sub-paragraph (1)(b) attempts to address this issue. However, to be effective the additional words are required to ensure works may not be constructed on land over which, for example, permanent rights of way are acquired under the Order, which would not thereby authorise or justify the retention of the relevant works .</p>
<p>63. -(1) The undertaker must before commencing construction of any specified work supply to BPC proper and sufficient plans of that work for BPC's approval and the specified work must not be commenced or executed except in accordance with such plans as have been approved in writing by BPC.</p> <p>(2) Subject to sub-paragraph (3), BPC's approval under sub-paragraph (1) must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions.</p> <p>(3) BPC's approval to plans must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions,—</p> <p>(a) in respect of all or any of Work No. 1C on BPC's property and Work No. 19, if and in so far as the proposed works comprise and, following design development, are broadly consistent with the works shown on drawings W1097B-ARP-DRG-ECV-000305, W1097B-ARP-DRG-ECV-000330 and W1097B-ARP-DRG-ECV-000331;</p> <p>(b) in respect of Work No. 18 if and in so far as the proposed works</p>	<p>Sub-paragraphs (1) and (2) are believed to be agreed by the Applicant.</p> <p>They are substantially to the same effect as proposed by paragraph 56(1) of the application draft DCO subject to drafting changes consequential on the agreement in sub-paragraph (3) below and subject to the agreement reached as to the scope of the works for which BPC's approval is needed.</p> <p>Sub-paragraph (3) is believed to be agreed by the Applicant other than the addition of the reference in bold in sub-paragraph (a) to Work No. 19 and the correction in sub-paragraph (b) of the reference to Work No. 18.</p> <p>The provision is needed to ensure that, in relation to certain works affecting BPC's property and assets BPC has a greater degree of control over the works to be carried out. Where this provision applies, the plans of the relevant works submitted to BPC for approval under sub-paragraph 63(1) must comply with the tests in this provision if</p>

<p>comprise and, following design development, are broadly consistent with the Bridleway Extension Under the Elevated M5 Plan; and</p> <p>(c) in respect of Work No. 16C, if and in so far as the proposed works comprise only work necessary to renew the level crossing in modern equivalent form.</p> <p>(4) Where under sub-paragraph (2) or (3) BPC's approval to plans submitted by the undertaker under sub-paragraph (1) cannot be unreasonably withheld or delayed if by the end of the period of 28 days beginning with the date on which such plans have been supplied to BPC, BPC has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon BPC written notice requiring BPC to intimate approval or disapproval within a further period of 28 days beginning with the date upon which BPC receives written notice from the undertaker. If by expiry of the further period of 28 days BPC has not intimated approval or disapproval, BPC is deemed to have approved the plans as submitted.</p> <p>(5) When signifying approval of plans submitted under sub-paragraph (1), BPC may specify any protective works (whether temporary or permanent) which in BPC's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of BPC's property or the continuation of safe and efficient operation of the Port (including the Port's railway) and such protective works as may be reasonably necessary for those purposes are to be constructed by BPC but at the expense of the undertaker, or if BPC so desires such protective works must be carried out by the undertaker at its own expense with all reasonable dispatch, and the undertaker must not commence the construction of the specified works until BPC has notified the undertaker that the protective works have been completed to BPC's reasonable satisfaction.</p> <p>(6) When signifying approval of plans submitted under sub-paragraph (1) in relation to Work No. 18, BPC may specify any environmental protection works which in BPC's reasonable opinion should be implemented before the commencement of, or during, the construction of Work No. 18 and such environmental protection works as may be reasonably necessary for those</p>	<p>BPC is to be required to act reasonably in giving or withholding its approval of them.</p> <p>This applies to Works No. 1C and 16C (both of which alter BPC's private railway assets) and Work No 18.</p> <p>BPC considers the provision should also apply to Work No. 19, which comprises changes to the signalling and related equipment on BPC's railway. These works are shown on drawings W1097B-ARP-DRG-ECV-000330 and W1097B-ARP-DRG-ECV-000331 referred to in the agreed text of the paragraph.</p> <p>Sub-paragraph (4) is believed to be agreed by the Applicant.</p> <p>The provision is to the same effect as paragraph 56(2) of the application draft DCO, subject to drafting changes consequential on the agreement in sub-paragraph (3) above.</p> <p>Sub-paragraph (5) is believed to be agreed by the Applicant.</p> <p>This provision is substantially as proposed in the application draft DCO, paragraph 56(3).</p> <p>Sub-paragraph (6) is believed to be agreed by the Applicant.</p> <p>In REP5-049 BPC explained its statutory duty under Section 48A Harbours Act 1964, which requires it to take into account the conservation of various environmental features in exercising its</p>
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<p>purposes are to be implemented by BPC but at the expense of the undertaker, or if BPC so desires such environmental protection works must be implemented by the undertaker at its own expense with all reasonable dispatch, and except to the extent BPC may agree the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that any and all relevant environmental protection works have been implemented to BPC's reasonable satisfaction.</p>	<p>functions. This provision is necessary in order to enable BPC to discharge that duty, in particular so that BPC can secure compliance by the undertaker in its implementation of the authorised development of measures needed in accordance with BPC's Ecological Management Plans in relation to the construction of Work No. 18 which is to be undertaken on BPC's specific ecological management areas at Area to the East of M5.</p> <p>See also:</p> <ul style="list-style-type: none"> • REP2-065 and REP-066 (re ExQ1 BIO.1.37); and • REP3-046 and paragraphs 6.9.5 and 6.9.6 of BPC's written representation (REP2-064). <p>The provision is modelled on the provisions for protective works contained in the application draft DCO.</p>
<p>64. -(1) Any specified work and any protective works (and any environmental protection works connected with Work No. 18) to be constructed or implemented by virtue of paragraph [63(5) or 63(6)] must, when commenced, be constructed and implemented with all reasonable dispatch in accordance with the plans approved or deemed to have been approved under paragraph [63]—</p> <ul style="list-style-type: none"> (a) under BPC's supervision (where appropriate and if given) and to BPC's reasonable satisfaction; (b) in such manner as to cause as little damage as is possible to BPC's property; and (c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe and efficient operation of the Port (including use of the Port's railway or the traffic on it). <p>(2) If any damage to BPC's property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph [63](1), make good such damage and pay to BPC all reasonable expenses to which BPC may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.</p> <p>(3) Nothing in this Part of this Schedule imposes—</p>	<p>Paragraph 64 is believed to be agreed by the Applicant.</p> <p>It substantially follows paragraph 57 of the application draft DCO but amended to include reference to environmental protection works and their implementation, consequential on sub-paragraph 63(6).</p>

<ul style="list-style-type: none"> (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of BPC or its servants, contractors or agents; or (b) any liability on BPC with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents. 	
<p>65. The undertaker must—</p> <ul style="list-style-type: none"> (a) at all times afford reasonable facilities to BPC's representative (or to a person nominated by BPC's representative) for access to a specified work during its construction; and (b) supply BPC with all such information as BPC's representative may reasonably require with regard to a specified work or the method of constructing it. 	<p>Paragraph 65 is believed to be agreed by the Applicant.</p> <p>The provision is as proposed in the application draft DCO, paragraph 58.</p>
<p>66. BPC must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by BPC under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.</p>	<p>Paragraph 66 is believed to be agreed by the Applicant.</p> <p>The provision is as proposed in the application draft DCO, paragraph 59.</p>
<p>67. -(1) If any permanent or temporary alterations or additions to BPC's property, or any protective works under paragraph [63(5)], are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised development that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by BPC and if BPC gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker must pay to BPC all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by BPC in maintaining, working and, when necessary, renewing any such alterations or additions.</p> <p>(2) If the cost of maintaining, working or renewing BPC's property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against-any sum payable by the</p>	<p>Paragraphs 67(1) and (2) are believed to be agreed by the Applicant.</p> <p>The provisions are substantially as proposed in the application draft DCO, paragraph 60.</p>

<p>undertaker to BPC under this paragraph.</p>	
<p>68. The undertaker must repay to BPC all fees, costs, charges and expenses reasonably and properly incurred by BPC—</p> <ul style="list-style-type: none"> (a) in constructing any protective works under the provisions of paragraph [63(5)] and in implementing any environmental protection works under the provisions of paragraph [63(6)] including, in respect of any permanent protective works or permanent environmental protection works, a capitalised sum representing the cost of maintaining and renewing those works; (b) in respect of BPC's representative's approval of plans submitted by the undertaker and the supervision by BPC of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part; (c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting, watching and lighting BPC's property (including the Port's railway) and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work; and (d) in respect of any additional temporary lighting of BPC's property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work. 	<p>Paragraph 68 is believed to be agreed by the Applicant, apart from the wording in bold.</p> <p>The provision is substantially as proposed in the application draft DCO, paragraph 61, but with the addition of the words in bold.</p> <p>BPC considers that the words in bold are a necessary drafting addition, consequent on the acceptance in paragraph 63(6) of the right for BPC to require environmental protection works and, if necessary, to carry them out at the undertaker's expense.</p>
<p>69. If at any time after the completion of a specified work BPC gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation or use of any of BPC's property (including the Port's railway) in connection with carrying on BPC's statutory undertaking, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not to adversely affect the operation or use of such property in that connection.</p>	<p>Paragraph 69 is believed to be agreed by the Applicant.</p> <p>The provision is substantially as proposed in the application draft DCO, paragraph 62.</p>
<p>70. Any additional expenses which BPC may reasonably incur in altering, reconstructing, working, or maintaining under any powers existing at the making of this Order any of BPC's property in connection with carrying on</p>	<p>Paragraph 73 is believed to be agreed by the Applicant.</p> <p>This provision is substantially as proposed in the application draft</p>

<p>BPC's statutory undertaking by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, working or maintenance has been given to the undertaker, are to be repaid by the undertaker to BPC.</p>	<p>DCO, paragraph 63.</p>
<p>71. -(1) The undertaker must pay to BPC all costs, charges, damages and expenses not otherwise provided for in this Part (but subject to article 41 (no double recovery)) which may be occasioned to or reasonably and properly incurred by BPC —</p> <ul style="list-style-type: none"> (a) by reason of the construction, working maintenance of a specified work or the failure of such a work; or (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work <p>and the undertaker must indemnify BPC from and against all costs, claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done BPC on behalf of the undertaker or in accordance with plans approved by BPC or in accordance with any requirement of BPC's representative or under BPC's representative's supervision will not (if it was done without negligence on the part of BPC or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.</p> <p>(2) BPC must give the undertaker reasonable notice of any such claim or demand made by a third party as soon as reasonably practicable after BPC becomes aware of it and must make no settlement or compromise of such a claim or demand in excess of £10,000 without the prior consent of the undertaker (such consent not to be unreasonably withheld or delayed).</p>	<p>Sub-paragraph 71(1) is believed to be agreed by the Applicant.</p> <p>The provision is substantially as proposed in the application draft DCO, paragraph 64(1).</p> <p>Sub-paragraph 71(2) is believed to be agreed by the Applicant.</p> <p>The provision is substantially as proposed in the application draft of the DCO, paragraph 64(2), but amended to reflect the widely accepted principles that the beneficiary of an indemnity should be able to settle small claims without the consent of the indemnifier, and that where the indemnifier's consent is needed, this should not unreasonably be withheld. Unless amended in this way the requirement for consent would negate the protection that the indemnity is intended to provide in respect of the liabilities incurred.</p>
<p>72. BPC must, on receipt of a request from the undertaker, from time to time provide free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker</p>	<p>Paragraph 72 is believed to be agreed by the Applicant.</p> <p>This is as proposed in the application draft of the DCO, paragraph 65, subject to the removal of inapplicable references to "relevant costs".</p>

<p>to assess the reasonableness of any such estimate or claim made or to be made under this Part.</p>	
<p>73. In the assessment of any sums payable to BPC under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by BPC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.</p>	<p>Paragraph 73 is believed to be agreed by the Applicant.</p> <p>The provision is as proposed in paragraph 66 of the application draft of the DCO.</p>
<p>BPC's apparatus</p>	
<p>74. Despite any provision of this Order or anything shown on the land plan—</p> <ul style="list-style-type: none"> (a) the undertaker must not acquire any of BPC's apparatus other than by agreement; (b) any right of BPC to maintain any of BPC's apparatus in land must not be extinguished other than with BPC's agreement; and (c) the undertaker must not alter, divert, remove, replace, reposition, relocate or repair any of BPC's apparatus other than with BPC's consent (not to be unreasonably withheld or delayed in respect of any specified work). 	<p>Paragraph 74 is believed to be agreed by the Applicant.</p> <p>It is a usual provision to protect the apparatus of a statutory undertaker from the undertaker's powers under the DCO, in the light of section 138 Planning Act 2008 and article 37 of the draft DCO.</p>
<p>The Port's railway</p>	
<p>75. For the purpose of this Order—</p> <ul style="list-style-type: none"> (a) no part of the Port's railway is, or will become by virtue of this Order or the execution of the authorised development, existing operational railway or operational railway; and (b) no part of BPC's property or of any other land over which the Port's railway is located (whether or not that land is owned by BPC) is, or will become by virtue of this Order or the execution of the authorised development, operational railway land or currently operational railway land or form part of the railway authorised by this Order to which article 39 (operation and use of railways) applies. 	<p>Paragraph 75 is believed to be agreed by the Applicant.</p> <p>It is necessary to ensure that, despite part of the authorised development being executed on and affecting the Port's railway, the Port's railway remains BPC's private asset and does not fall within the powers of NR.</p>
<p>Trees and other vegetation</p>	

<p>76. Despite any provision in this Order and anything shown on the certified documents, in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development the undertaker must not—</p> <p>(a) plant new or replacement trees, hedges, hedgerows, shrubs or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed; or</p> <p>(b) remove, cut back, fell or lop, prune or reduce in any way any other hedge, tree, shrub or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed.</p>	<p>Paragraph 76 is believed to be agreed by the Applicant.</p> <p>It is necessary to enable BPC to control the removal of vegetation on the Port estate where that vegetation performs a role in Port security or the discharge by BPC of its duties under section 48A of the Harbours Act 1964 and to enable compliance with BPC's ecological management plans: see BPC's comments at REP2-065, REP3-046 and REP5-049.</p> <p>The control on new planting is necessary to ensure new planting does not occur where eg its roots could damage Port infrastructure, for example around the Marsh Lane perimeter track.</p>
<p>General</p>	
<p>77. The undertaker must in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development secure compliance with and implementation of:</p> <p>(a) the form of protocol (if any) agreed between BPC and the undertaker relating to the regulation on property owned by BPC of construction operations and activities in connection with the authorised development; and</p> <p>(b) all and any applicable conditions attached to any relevant consent, agreement or approval given by BPC for the purpose of this Part.</p>	<p>Sub-paragraph (a) is not agreed by the Applicant.</p> <p>BPC explained the need for a construction protocol in REP4-058 (in relation to para 2.1.4 of BPC's written representation). Construction operations in relation to the authorised development must be in compliance with the protocol. Accordingly compliance with the protocol - once agreed between BPC and the undertaker - must be secured via the DCO so that it is adhered to by all those who may exercise the DCO powers.</p> <p>Sub-paragraph (b) is believed to be agreed by the Applicant. It reflects paragraph 61D of the NGET Protective Provisions.</p>
<p>78. Article 49 (procedure in relation to further approvals, etc) will not apply in relation to any consent, agreement or approval from BPC required under this Order.</p>	<p>Paragraph 78 is believed to be agreed by the Applicant.</p> <p>It reflects paragraph 61B of the NGET Protective Provisions.</p> <p>It is relevant and necessary because BPC is a relevant authority within the meaning of article 49 in its capacity as street authority in relation to private streets on the Port estate.</p>

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

Protective Provisions required by First Corporate Shipping Limited trading as The Bristol Port Company (BPC)

PART 5

Protection for First Corporate Shipping Limited

49. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and BPC.

50.—(1) In this Part—

"access works" means works—

(a) on, over or under or otherwise affecting a private street or any public right of way on BPC's property, including the kerbs, splitter islands, footways, verges and carriageway of such street and any road markings, signing, signals, and other street furniture;

(b) to alter, modify, improve, create or provide any means of access (whether temporary or otherwise) on or across BPC's property or to or from any private street or any other part of BPC's property or to or from any dock public road;

(c) to alter the layout of any private street or any public right of way on BPC's property; and

(d) to position or install plant or equipment on or over any private street or any public right of way on BPC's property,

and includes, without limitation on the scope of the foregoing, any works under article 13 (street works and power to alter layout etc., of streets) or article 17 (access to works) in respect of or affecting any private street or any public right of way on BPC's property;

"ancillary works" means embankments, earthworks, retaining structures or works, planting, landscaping or other mitigation, fencing and all other works falling within the descriptions of the further associated development set out in paragraphs (a) to (x) (inclusive) of Schedule 1;

"BPC" means First Corporate Shipping Limited (registered company number 2542406), trading as The Bristol Port Company, being the statutory harbour authority and competent harbour authority for the Port;

"BPC's apparatus" means all and any gas, oil and water pipes, water tanks, cisterns, drains and drainage works, sewers, pumps, electric and communication wires, cables and plant, ducts, conduits, governors, transformers, meters and any other service media, surface water interceptors (and whether in all cases for drainage, gas, oil, water, electricity, telephone, television, data and information transmission or any other service) on BPC's property;

"BPC's property" means the whole and each of every part of all the leasehold and freehold land and rights and the benefit of all covenants, owned by or vested in BPC at Avonmouth, Chittening and Portbury—

(a) upon, across, under, over or in respect of or affecting which any powers conferred by this Order may be exercised; or

(b) upon, across, under or over which there is situated anything over or in respect of which any such powers may be exercised,

and includes, without limitation on the scope of the foregoing, the Port's railway and any private street but does not include the Court House Farm terminable access;

"BPC's representative" means the person appointed by BPC from time to time to be its representative for the purposes of this Order;

"certified documents" means any and all of the plans and documents certified by the Secretary of State for the purpose of this Order;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"construction access rights" means any and all powers conferred on the undertaker by this Order to exercise temporary powers of access over any land with or without vehicles, plant and equipment including, without limitation on the scope of the foregoing, any ancillary powers to remove buildings and vegetation from that land and to construct works for the purpose of providing a means of access;

"Court House Farm easement" means a Deed of Grant of Easement dated 4 September 2017 made between Network Rail and First Corporate Shipping Limited t/a The Bristol Port Company;

"Court House Farm terminable access" means the existing crossing at grade over the disused Portishead Branch Line which is described in the Court House Farm easement;

"dock public road" means each of the streets known as Marsh Lane, Royal Portbury Dock Road (including the roundabout at its junction with Portbury Way and Gordano Way), Redland Avenue, Gordano Way, Garonor Way and Portbury Way to the extent that it is maintainable highway;

"drainage works" means works—

(a) to create, alter or remove any culvert or other crossing over, under or affecting any watercourse or drainage ditch on, over or under BPC's property or which drains water to or from BPC's property; and

(b) to make any opening or connection into any watercourse belonging to or to lay down, take up or alter any pipes for that purpose;

"environmental protection works" means measures reasonably required to be carried out on or in respect of Work No. 18 to protect the scrub environment and water bodies established and managed by BPC;

"highway access land" means any and all of parcels 5/30, 5/61, 5/62, 5/65 and 5/70;

"maintainable highway" has the same meaning as in section 86(1) of the 1991 Act;

"Marsh Lane track" means the private street referred to in Schedule 3 and there described as Access Road to the M5 Avonmouth Bridge east of Marsh Lane, Easton-in-Gordano;

"Marsh Lane track land" means any and all of parcels 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 and includes the Marsh Lane track;

"plans" includes sections, elevations, designs and design data, drawings, calculations, specifications, programmes, method statements, assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work;

"Port" means the port and harbour of Bristol;

"Port's railway" means the railway owned by BPC leading from Portbury Junction, Pill to the Royal Portbury Dock;

"powers of temporary possession" means the powers conferred by article 33 (temporary use of land for carrying out the authorised development);

"preparatory activities" means ecological mitigation works, archaeological investigations, boreholes, intrusive surveys, environmental surveys and monitoring, other investigations for the purpose of assessing ground conditions or the receipt and erection of construction plant and equipment, utility diversions or ground clearance works but excluding any such activities carried out under article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property;

"private street" means any street on BPC's property which is not a maintainable highway;

"public path land" means any and all of parcels 5/27, 5/101, 5/102, 5/130, 5/131, 5/135 and 5/136;

"rail link land" means any and all of parcels 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55;

"railway rights land" means any and all of parcels 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;

"relevant works" means that part of Work 1C that is on the Port's railway and Works Nos. 14, 14A, 14B, 15, 16, 16A, 16C, 18, 19 and 20;

"specified work" means—

(a) that part of Work 1C that is on the Port's railway;

(b) the whole of Work Nos. 14, 14A, 15, 16, 16A, 16C, 18, 19 and 20;

(c) **all access works and drainage works; and**

(d) so much of all other parts of the authorised development and of any works to be carried out under the powers conferred by article 33 as is situated upon, across, under, over or within 5 metres of BPC's property, including all environmental mitigation and restoration measures;

(2) In this Part—

- (a) references to the undertaker include references to any person to or in which any or all of the benefit of the provisions of this Order and any related statutory powers are transferred or are vested pursuant to any provision of this Order and any person which may by virtue of any agreement made pursuant to article 11 (agreements with Network Rail) whether alone or jointly with another exercise any or all of the powers contained in this Order;
- (b) references to numbered parcels are to the parcels of land so numbered in the book of reference;
- (c) references to a requirement to consult include that consultation must take place in good faith and in a timely manner with the provision of all reasonably necessary information and so that the party concerned must act reasonably in taking into account the reasonable comments made by the other party in response; and
- (d) references to BPC's consent, agreement or approval are to BPC's prior consent, agreement or approval given in writing.

51.—(1) Subject as set out in sub-paragraph (2), nothing in this Order affects—

- (a) any right of BPC to use the Court House Farm terminable access; or
- (b) the provisions of the Court House Farm easement or any other agreement relating to the Court House Farm terminable access

and accordingly the following provisions of this Part of this Schedule do not apply as regards the Court House Farm terminable access.

(2) Despite anything contained in the Court House Farm easement or any other agreement relating to the Court House Farm terminable access, BPC's rights to use the Court House Farm terminable access under and in accordance with the Court House Farm easement or such other agreement must not terminate or cease to be exercisable before the date which is fifteen months after the approval date, and the Court House Farm easement and any such other agreement are modified accordingly.

(3) In sub-paragraph (2), the "approval date" is the first date on which each of the Full Council of North Somerset Council, the West of England Joint Committee, the West of England Combined Authority Committee and The Secretary of State for Transport has confirmed in writing its approval under the Department for Transport WebTAG technical process for the appraisal of major transport schemes of the Full Business Case and the Final Approval Business Case in relation to the MetroWest Phase 1 proposals, including the authorised development.

52. The undertaker must give written notice to BPC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 10 (consent to transfer of benefit of order) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

53.—(1) No agreement made under article 11 (agreements with Network Rail) may authorise or permit the exercise by Network Rail, or by the undertaker, or by Network Rail and the undertaker jointly, of any powers and rights of Network Rail and the undertaker (as the case may be) under any BPC contract or affecting any of BPC's property.

(2) In sub-paragraph (1), "BPC contract" means all and any contracts, licences, easements and other agreements, permissions and consents to which BPC is a party or of which it has the benefit.

Watercourses and drainage

54.—(1) No part of any impounded dock at the Port is included within the definition of "watercourse" for any purpose of this Order.

(2) The undertaker must not without BPC's consent (such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions) create any new discharges for water into any watercourse belonging to or used by BPC.

- (3) Without limitation on the scope of sub-paragraph (2), any consent given by BPC under this paragraph—
- (a) may be given subject to reasonable conditions as to the quantities of water permitted to be discharged and as to the duration of any use of the relevant watercourse by the undertaker; and
 - (b) does not obviate the need for the undertaker to obtain any further consents required in relation to the activity concerned.
- (4) In the exercise of any power under article 22 (discharge of water), the undertaker must not damage or interfere with the bed or banks of any watercourse in, on, over or under BPC's property.

Surveys

55.—(1) The undertaker must not exercise the powers conferred by article 23 (authority to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act as applied by this Order in respect of any of BPC's property—

- (a) outside the Order limits except to the extent that BPC agrees for the purpose of carrying out non-intrusive surveys, investigations and monitoring only;
- (b) other than to the extent that the exercise of such powers is necessary in connection with carrying out the authorised development; and
- (c) other than by prior agreement with BPC on each and every occasion, such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions, and on at least 14 days' notice.

(2) When requesting BPC's agreement to access under sub-paragraph (1) the undertaker must provide to BPC full details of the property to which access is requested, the activities proposed (including risk assessments and method statements and intended duration of the activities), the identity of the persons who would undertake them and any apparatus that might be left on the affected property.

(3) BPC is, without limitation on the scope of sub-paragraph (1)(c)—

- (a) entitled to refuse access as requested by the undertaker on any occasion for operational reasons, in which case BPC must act reasonably and without delay in seeking to offer alternative arrangements; and
- (b) entitled as a condition of its agreement on any occasion to require the production of evidence of the existence of adequate insurance with insurers of repute, the proceeds of which will be available to cover all liability, costs, claims, expenses and demands which may arise as a result of that access.

(4) The undertaker must remove any equipment left on, over or under BPC's property as soon as reasonably possible after completion of the relevant surveys and investigations.

(5) The undertaker must, at its own expense, deliver to BPC as soon as reasonably practicable after their production on a non-reliance basis copies in an electronic format of all survey and ground investigation reports carried out in respect of BPC's property under the powers conferred by article 23 or the powers conferred by section 11(3) of the 1965 Act as applied by this Order, which reports BPC may use and provide to others (on a non-reliance basis) free of cost in connection with works and operations at the Port.

Streets, access and public rights of way

56.—(1) The undertaker must not in carrying out any works or exercising the powers conferred by this Order cause pedestrian or vehicular access to or across any of BPC's property (including access for cargo operations but excluding access over the Court House Farm terminable access) to be interfered with or obstructed, other than with the consent of BPC, not to be unreasonably withheld or delayed, or, if the carrying out of works or exercising the powers relate to a dock public road, unless the undertaker has first consulted with BPC.

(2) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under—

- (a) article 13(1) (street works and power to alter layout etc., of streets) in respect of or so as to affect the Marsh Lane track other than by prior agreement with BPC such agreement not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions;
- (b) article 13(1) in respect of or so as to affect any dock public road unless it has first consulted with BPC; or

(c) article 13(2) in respect of or so as to affect any private street on any part of BPC's property.

(2) With the exception of the locations specified in columns (1) and (2) of Schedule 7 and shown on sheet 5 of the compounds, haul roads and access to works plan as AW5.1 (access from the highway known as Marsh Lane, Easton in Gordano, north of the disused Portishead Branch railway line) and AW5.3 (access from the highway known as Marsh Lane, Easton in Gordano, south of the disused Portishead Branch railway line) the undertaker must not pursuant to any powers in this Order carry out any works to create or improve any means of access affecting any private street or any public right of way on BPC's property or any other part of BPC's property or any dock public road.

(3) In carrying out any access works, the undertaker must not so far as reasonably practicable interfere with or obstruct the free, uninterrupted and safe use by other traffic of any street or interfere with street furniture, signage and lighting masts.

(2) Without limitation on the scope of sub-paragraph (1), the undertaker must not exercise any powers under article 15(1) (temporary stopping up of streets and public rights of way) in respect of:

- (a) the Marsh Lane track (except to the extent permitted by article 15(5)) or any other private street; or
- (b) Royal Portbury Dock Road without BPC's consent, such consent not to be unreasonably withheld or delayed but which may be given subject to reasonable conditions.

(4) Despite any provision in this Order, the undertaker must not, except with the agreement of BPC, exercise any power under article 15 or article 46 to use or to authorise the use of any private street or any dock public road or any public right of way on BPC's property as a temporary working site or as a parking place.

(5) The undertaker must exercise the power granted to it under paragraph (5) of article 15 to stop up public rights of way LA8/67/10 and LA/8/68/10 to the extent specified in column (3) of Part 2 of Schedule 5 (Bridleways and footpaths to be temporarily suspended for which no substitute is to be provided during suspension), throughout the period of operation or use of the Lodway Farm construction compound to be constructed as Work No. 17 and the temporary construction compound located under the M5 Avonmouth Bridge.

(6) The undertaker must, before submitting any survey, proposed measures or strategy relating to the Marsh Lane track to the relevant planning authority for approval in accordance with requirement [X] in Schedule 2, consult with BPC in relation to the content of all such surveys, measures and strategies.

(7) Despite any other provision of this Order, no part of Work No. 16 or Work No. 18 (including the right of way to be constructed by the undertaker pursuant to article 16(3) and described in Part 2 of Schedule 6 (Bridleways, cycle tracks and footpaths) as a bridleway between points B1 and B2 shown on Sheet 5 of the new highways plan) is or will become open for use by any person or a public right of way or other highway except with the agreement of BPC.

(8) Despite paragraphs (1) and (2) of article 19—

- (a) any street constructed under this Order on BPC's property; and
- (b) the altered or diverted part of any street altered or diverted under this Order on BPC's property

must be maintained by and at the expense of the relevant highway authority at all times from its completion.

(9) If the undertaker acquires, whether compulsorily or by agreement, any of BPC's property within the Order limits, or any right or interest in or over such property, which property is subject to a public right of way, from the date of the acquisition of the relevant land, right or interest or from the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act (power of entry), whichever is the earlier, any liability or responsibility of BPC to the relevant highway authority for or in respect of the maintenance of that public right of way is extinguished and that public right of way shall after that date instead be maintained by and at the expense of the relevant highway authority.

(10) Without limitation on the scope of any other provision in this Part if any damage to any public right of way on BPC's property is caused in the exercise of any powers under this Order or by carrying out of, or in consequence of the construction of, any works under this Order, the undertaker must make good such damage and pay to BPC all reasonable expenses to which BPC may be put by reason of any such damage.

(11) The undertaker must not exercise any powers under article 13, article 15 or article 46 (traffic

regulation) over or in respect of any part of BPC's property or any dock public road after completion of construction of the authorised development.

Acquisition and use of land

57.—(1) The undertaker must not exercise the powers conferred by—

- (a) **article 24 (compulsory acquisition of land) or article 31 (acquisition of subsoil or air-space only) over or in respect of the public path land or any part of parcel 5/50 which is not part of the embankment supporting Marsh Lane;**
- (b) **article 27(1) (compulsory acquisition of rights or imposition of covenants) over or in respect of the rail link land or any of parcels 5/75, 5/103 and 5/112;**
- (c) **article 27(2) over or in respect of any of BPC's property;**
- (d) **article 32 (rights under or over streets) over or in respect of any private street; or**
- (e) **article 34 (temporary use of land for the purpose of maintaining the authorised development) over or in respect of any of BPC's property,**

unless the exercise of such powers is with the consent of BPC.

(2) **Except to the extent BPC may agree, article 28(3) (Private rights over land subject to compulsory acquisition or temporary possession), article 29 (power to override easements and other rights) and article 37 (statutory undertakers and electronic communications code operators) shall not apply in relation to any interest, right or restriction the benefit of which is vested in BPC or any other person affecting the rail link land or the Marsh Lane track land or in relation to any interest, right or restriction the benefit of which is vested in BPC affecting any of BPC's property or the railway rights land or the highway access land.**

58.—(1) The undertaker must not exercise the powers conferred by section 271 (extinguishment of rights of statutory undertakers: preliminary notices) of the 1990 Act in relation to:

- (a) **any rights of BPC over or in respect of the railway rights land or the highway access land; or**
- (b) **any of BPC's apparatus.**

(2) **Despite any other provision of this Order, if the undertaker acquires any interest in the railway rights land or in the highway access land, whether compulsorily or by agreement, no rights of BPC over or in respect of the railway rights land or the highway access land so acquired must be extinguished.**

Use of land and execution, maintenance and use of the authorised development

59.—(1) Despite any provision in this Order or anything shown on the land plan, the undertaker must not except with the agreement of BPC—

- (a) **exercise any powers of temporary possession over or in respect of the Marsh Lane track land or the rail link land or parcels 5/103 and 5/170;**
- (b) **exercise any powers of temporary possession over or in respect of parcel 5/75 or (if and to the extent they form part of BPC's property) parcel 5/85 or parcel 5/86 unless BPC fails, within 14 days of a request by the undertaker, to make available for exercise by the undertaker in substitution for the exercise of the relevant powers temporary rights of access over other land which are sufficient (whether alone or in conjunction with the exercise by the undertaker of other powers under this Order) to enable the undertaker to gain access in connection with the construction of the authorised development, with such vehicles, plant and equipment as may be necessary, from access point AW5.3 shown on the compounds, haul roads and access to works plan to the accommodation bridge (and associated walls, embankments and structures) on land adjacent to parcel 05/86 and to the culvert, watercourse and head wall situated on land adjacent to parcel 05/85; or**
- (c) **(other than any construction access rights which may be authorised by or pursuant to the terms of this Order over the Marsh Lane track or parcel 5/75), exercise any construction access rights over BPC's property or otherwise use any part of BPC's property for the purpose of gaining access to any part of the authorised development or to any other land or in connection with the construction or maintenance of the authorised development.**

(2) **Any exercise of powers of temporary possession by the undertaker in respect of the rail link land**

or the Marsh Lane track land which may be permitted pursuant to the terms of this Order is subject to, and in common with, the use of the rail link land and the Marsh Lane track land by BPC and by any other person acting with BPC's authority or which may have rights to use the rail link land and the Marsh Lane track land.

60.—(1) If required to do so by BPC (acting reasonably), the undertaker must at its cost and expense procure that surveys are carried out to a specification approved by BPC (acting reasonably) to show the condition of any land of which temporary possession is taken under article 33 (together with all associated structures) before the undertaker's use of it begins and after that use ends.

(2) The undertaker must promptly after receipt of reasonable demand by BPC and at the undertaker's cost and expense make good any and all damage and wear and tear caused to any part of BPC's property which is used by the undertaker in connection with the construction or maintenance of the authorised development where in BPC's reasonable opinion the rectification of such damage, wear or tear is necessary in the interests of safety or security.

(3) If required to do so by BPC (acting reasonably), the undertaker must permit BPC to inspect the execution of all works of rectification being carried out under this paragraph in order to ensure compliance by the undertaker with the requirements of this paragraph.

61.—(1) The undertaker must present to BPC not less than three months before the intended date of commencing construction the draft programme for the execution of each part of the authorised development on BPC's property.

(2) The undertaker must consult with BPC in relation to the draft programme and must present its final programme for the execution of the authorised development on BPC's property to BPC not less than four weeks before the intended date of commencing construction.

(3) The undertaker must not enter on or take temporary possession of any part of BPC's property unless it has served at least 14 days' written notice on BPC of its intended entry onto that part.

(4) In this paragraph "intended date of commencing construction" means the first date on which the undertaker wishes to commence construction of any part of the authorised development on, under or over any part of BPC's property, including carrying out any preparatory activities.

(5) In the exercise of any powers of temporary possession in respect of any part of BPC's property and in the commencement and execution of the authorised development on BPC's property the undertaker must—

- (a) proceed diligently with the works affecting each part of BPC's property; and
- (b) notify BPC in writing of the completion of the relevant part of the authorised development affecting each part of BPC's property within fourteen days of its completion.

(6) In the exercise of any powers of temporary possession in respect of any part of BPC's property the undertaker must not—

- (a) except with the agreement of BPC, provide or authorise the provision of car parking or storage (for materials or other items) facilities on any part of BPC's property other than within Work No. 16A;
- (b) demolish or remove any buildings; or
- (c) except as BPC agrees, construct or carry out on BPC's property any works comprising fencing, any mitigation works, ground or rock stability, geotechnical or strengthening works other than works which are of a temporary nature.

(7) In addition to and without limitation on the scope of the undertaker's other obligations under this Order (including those in article 33(4) and Schedule 2), before giving up possession of any part of BPC's property in respect of which any powers of temporary possession have been exercised the undertaker must remove any works constructed in contravention of sub-paragraph (6) or paragraph [62].

Works

62. Despite any provision of this Order or anything shown on the certified documents except as BPC may agree—

- (a) no part of Work No. 14 or any ancillary works associated with Work No. 14 must be constructed or maintained on parcel 04/55; and

- (b) other than works of a temporary nature, no ancillary works associated with any relevant works or with Work No. 1A or Work No. 1B must be constructed or maintained upon, across, under or over **any of BPC's property of which only temporary possession is taken under this Order or over which the undertaker does not, under this Order, acquire rights authorising the retention of those ancillary works.**

63.—(1) The undertaker must before commencing construction of any specified work supply to BPC proper and sufficient plans of that work for BPC's approval and the specified work must not be commenced or executed except in accordance with such plans as have been approved in writing by BPC.

(2) Subject to sub-paragraph (3), BPC's approval under sub-paragraph (1) must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions.

(3) BPC's approval to plans must not be unreasonably withheld or delayed, but may be given subject to reasonable conditions,—

- (a) in respect of all or any of Work No. 1C on BPC's property **and Work No. 19**, if and in so far as the proposed works comprise and, following design development, are broadly consistent with the works shown on drawings W1097B-ARP-DRG-ECV-000305, W1097B-ARP-DRG-ECV-000330 and W1097B-ARP-DRG-ECV-000331;
- (b) in respect of Work No. **18** if and in so far as the proposed works comprise and, following design development, are broadly consistent with the Bridleway Extension Under the Elevated M5 Plan; and
- (c) in respect of Work No. 16C, if and in so far as the proposed works comprise only work necessary to renew the level crossing in modern equivalent form.

(4) Where under sub-paragraph (2) or (3) BPC's approval to plans submitted by the undertaker under sub-paragraph (1) cannot be unreasonably withheld or delayed if by the end of the period of 28 days beginning with the date on which such plans have been supplied to BPC, BPC has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon BPC written notice requiring BPC to intimate approval or disapproval within a further period of 28 days beginning with the date upon which BPC receives written notice from the undertaker. If by expiry of the further period of 28 days BPC has not intimated approval or disapproval, BPC is deemed to have approved the plans as submitted.

(5) When signifying approval of plans submitted under sub-paragraph (1), BPC may specify any protective works (whether temporary or permanent) which in BPC's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of BPC's property or the continuation of safe and efficient operation of the Port (including the Port's railway) and such protective works as may be reasonably necessary for those purposes are to be constructed by BPC but at the expense of the undertaker, or if BPC so desires such protective works must be carried out by the undertaker at its own expense with all reasonable dispatch, and the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that the protective works have been completed to BPC's reasonable satisfaction.

(6) When signifying approval of plans submitted under sub-paragraph (1) in relation to Work No. 18, BPC may specify any environmental protection works which in BPC's reasonable opinion should be implemented before the commencement of, or during, the construction of Work No. 18 and such environmental protection works as may be reasonably necessary for those purposes are to be implemented by BPC but at the expense of the undertaker, or if BPC so desires such environmental protection works must be implemented by the undertaker at its own expense with all reasonable dispatch, and except to the extent BPC may agree the undertaker must not commence the construction of the specified work until BPC has notified the undertaker that any and all relevant environmental protection works have been implemented to BPC's reasonable satisfaction.

64.—(1) Any specified work and any protective works (and any environmental protection works connected with Work No. 18) to be constructed or implemented by virtue of paragraph [63(5) or 63(6)] must, when commenced, be constructed and implemented with all reasonable dispatch in accordance with the plans approved or deemed to have been approved under paragraph [63]—

- (a) under BPC's supervision (where appropriate and if given) and to BPC's reasonable satisfaction;
- (b) in such manner as to cause as little damage as is possible to BPC's property; and
- (c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and

safe and efficient operation of the Port (including use of the Port's railway or the traffic on it).

(2) If any damage to BPC's property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph [63](1), make good such damage and pay to BPC all reasonable expenses to which BPC may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of BPC or its servants, contractors or agents; or
- (b) any liability on BPC with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

65. The undertaker must—

- (a) at all times afford reasonable facilities to BPC's representative (or to a person nominated by BPC's representative) for access to a specified work during its construction; and
- (b) supply BPC with all such information as BPC's representative may reasonably require with regard to a specified work or the method of constructing it.

66. BPC must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by BPC under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

67.—(1) If any permanent or temporary alterations or additions to BPC's property, or any protective works under paragraph [63(5)], are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any part of the authorised development that includes a specified work, in consequence of the construction of that specified work, such alterations and additions may be carried out by BPC and if BPC gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker must pay to BPC all costs reasonably and properly incurred in constructing those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by BPC in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing BPC's property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to BPC under this paragraph.

68. The undertaker must repay to BPC all fees, costs, charges and expenses reasonably and properly incurred by BPC—

- (a) in constructing any protective works under the provisions of paragraph [63(5)] **and in implementing any environmental protection works under the provisions of paragraph [63(6)]** including, in respect of any permanent protective works **or permanent environmental protection works**, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of BPC's representative's approval of plans submitted by the undertaker and the supervision by BPC of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Part;
- (c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting, watching and lighting BPC's property (including the Port's railway) and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work; and
- (d) in respect of any additional temporary lighting of BPC's property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of a specified work.

69. If at any time after the completion of a specified work BPC gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation or use of any of BPC's property (including the Port's railway) in connection with carrying on BPC's statutory undertaking, the undertaker must, on receipt of such notice, take such steps as may be reasonably

necessary to put that specified work in such state of maintenance as not to adversely affect the operation or use of such property in that connection.

70. Any additional expenses which BPC may reasonably incur in altering, reconstructing, working, or maintaining under any powers existing at the making of this Order any of BPC's property in connection with carrying on BPC's statutory undertaking by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction, working or maintenance has been given to the undertaker, are to be repaid by the undertaker to BPC.

71.—(1) The undertaker must pay to BPC all costs, charges, damages and expenses not otherwise provided for in this Part (but subject to article 41 (no double recovery)) which may be occasioned to or reasonably and properly incurred by BPC —

- (a) by reason of the construction, working, maintenance of a specified work or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify BPC from and against all costs, claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done BPC on behalf of the undertaker or in accordance with plans approved by BPC or in accordance with any requirement of BPC's representative or under BPC's representative's supervision will not (if it was done without negligence on the part of BPC or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) BPC must give the undertaker reasonable notice of any such claim or demand made by a third party as soon as reasonably practicable after BPC becomes aware of it and must make no settlement or compromise of such a claim or demand in excess of £10,000 without the prior consent of the undertaker (such consent not to be unreasonably withheld or delayed).

72. BPC must, on receipt of a request from the undertaker, from time to time provide free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

73. In the assessment of any sums payable to BPC under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by BPC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

BPC's apparatus

74. Despite any provision of this Order or anything shown on the land plan—

- (a) the undertaker must not acquire any of BPC's apparatus other than by agreement;
- (b) any right of BPC to maintain any of BPC's apparatus in land must not be extinguished other than with BPC's agreement; and
- (c) the undertaker must not alter, divert, remove, replace, reposition, relocate or repair any of BPC's apparatus other than with BPC's consent (not to be unreasonably withheld or delayed in respect of any specified work).

The Port's railway

75. For the purpose of this Order—

- (a) no part of the Port's railway is, or will become by virtue of this Order or the execution of the authorised development, existing operational railway or operational railway; and
- (b) no part of BPC's property or of any other land over which the Port's railway is located (whether or not that land is owned by BPC) is, or will become by virtue of this Order or the execution of the authorised development, operational railway land or currently operational railway land or form part of the railway authorised by this Order to which article 39 (operation and use of railways) applies.

Trees and other vegetation

76. Despite any provision in this Order and anything shown on the certified documents, in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development the undertaker must not—

- (a) plant new or replacement trees, hedges, hedgerows, shrubs or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed; or
- (b) remove, cut back, fell or lop, prune or reduce in any way any other hedge, tree, shrub or other vegetation on BPC's property otherwise than with BPC's consent, such consent not to be unreasonably withheld or delayed.

General

77. The undertaker must in the exercise of any powers under this Order and in the construction, maintenance and operation of the authorised development secure compliance with and implementation of:

- (a) **the form of protocol (if any) agreed between BPC and the undertaker relating to the regulation on property owned by BPC of construction operations and activities in connection with the authorised development; and**
- (b) all and any applicable conditions attached to any relevant consent, agreement or approval given by BPC for the purpose of this Part.

78. Article 49 (procedure in relation to further approvals, etc) will not apply in relation to any consent, agreement or approval from BPC required under this Order.