

**From:** [Louise Gowman](#)  
**To:** [Metrowest1](#)  
**Subject:** Application reference TR040011: application by North Somerset District Council for an Order Granting Development Consent for the Portishead Branch Line - MetroWest Phase 1 - Deadline 7  
**Date:** 19 April 2021 16:37:36  
**Attachments:** [First Corporate Shipping Limited note for ExA in relation to the extent of matters agreed between BPC and the Applicant 19 April 2021.PDF](#)

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Dear Sirs

Please see the attached note, which we should be grateful if you would bring to the attention of the Examining Authority in advance of the close of the Examination.

Regards

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**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 relation to the extent of matters agreed between BPC and the Applicant after deadline 7**

**19 April 2021**

1. This note sets out BPC's comments on various submissions made by the Applicant at Deadline 7. It is intended to assist the ExA in understanding the extent of the remaining areas of disagreement between BPC and the Applicant in relation to the form of the protective provisions which should be included in the DCO for BPC's benefit and in relation to compulsory acquisition and related matters.

**Protective provisions**

2. Having seen the Applicant's explanation of the position in relation to the status of the BPC protective provisions in its s127 Position Statement (REP7-042 at page 134), BPC can confirm as follows.
  - 2.1 A full draft of the protective provisions required by BPC was sent by BPC to the Applicant on 23 February 2021. The draft reflected and supplemented the protective provisions which BPC had detailed in its written representation (REP2-046).
  - 2.2 Comments on that 23 February draft were received from the Applicant and Network Rail Infrastructure Limited (NR) on 7 April 2021.
  - 2.3 Discussions then took place between all parties, following which on 10 April 2021 BPC sent a revised draft of the protective provisions to the Applicant and NR. This revised draft is that referred to by the Applicant on page 134 of REP7-042 at para 1.6.4.
  - 2.4 On 12 April, BPC supplied to the Applicant and NR a further revised draft, which suggested further changes from the draft of 10 April. This is the draft that is referred to by the Applicant on page 134 of REP7-042 at para 1.6.5.
  - 2.5 BPC understands that the protective provisions included in the Applicant's revised draft development consent order submitted at deadline 7 (REP7-006) are based on BPC's 10 April draft but with amendments required by the Applicant.
3. BPC has reviewed the protective provisions included in the Applicant's revised draft development consent order (REP7-006). Having done so, it confirms it will agree that the proposed wording in that document of paragraph 52(1)(b) of Part 5 of Schedule 16 may (subject to a small drafting adjustment) be used in place of the equivalent paragraph 59(1)(c) in the BPC form of required protective provisions set out in REP7-050.
4. The form of paragraph 59 of the BPC protective provisions which BPC would accept is therefore as follows (with the change from the text of paragraph 59 as set out REP7-050 shown by underlining):

"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 parcels 05/75, 05/103, 05/104, 05/107, 05/108, 05/165, 05/171, 06/25, any part of 05/112 that is not part of the Marsh Lane track, or over bridleways and footpaths that are open to the public), 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."

5. Subject to that one change, BPC's required protective provisions, and the reasons they are required, remain as set out in REP7-050.

#### **Extent of BPC's objections to compulsory acquisition and related powers**

6. For clarity, BPC's objection to the proposed compulsory acquisition and related powers under the DCO in respect of its land is now limited to the areas of land and to extent set out in:
  - 6.1 BPC's note for the ExA in relation to compulsory acquisition matters submitted at deadline 7 (REP7-049); and
  - 6.2 BPC's required protective provisions (REP7-050) as now amended as set out in 4 above.
7. It can be seen that BPC's required protective provisions in REP7-050 seek to constrain the relevant powers to a lesser extent than is assumed by the Applicant in its comments at Deadline 7, as set out in REP7-042.
8. In table 1 of Schedule 3 of REP7-042 the Applicant makes various statements as to whether, in its view, particular areas of land are used for BPC's statutory undertaking, and as to whether serious detriment is caused by the Order proposals. BPC's position in relation to those matters is as set out in REP7-049 and in the earlier representations there referred to.

#### **Exercise of Order powers relating to compulsory acquisition matters**

9. BPC notes the Applicant's reference to a letter dated 14 April 2021 sent to BPC confirming how the Applicant seeks to exercise its powers of compulsory acquisition over BPC's land if the Order is made as sought by the Applicant (see REP7-042, page 134, para 1.6.8). BPC considers that any assurances about the exercise or application of powers under the Order properly belong in the Order, so that they contain the necessary clarity, are apparent on the

face of the Order and are enforceable against anyone who is the undertaker from time to time or seeks to use the undertaker's powers.

**Train movements**

10. For clarity BPC confirms that, having received suitable assurances from NR, it no longer seeks the inclusion in its required protective provisions of the provision set out in paragraph 5 of REP4-060. Accordingly, this provision is not included in BPC's required protective provisions set out in REP7-050.