

From: [REDACTED]
To: [Metrowest1](#)
Subject: Application by North Somerset Council (the "Applicant") for an Order granting development consent to construct a new railway on the trackbed of the former branch line from Bristol to Portishead including associated works
Date: 26 July 2021 15:59:49
Attachments: [Letter plus appendix to Planning Inspectorate 22 July 2021 \(protective provisions update\).PDF](#)
[Enclosure 1 to letter to Planning Inspectorate 22 July 2021.PDF](#)
[Enclosure 2 to letter to Planning Inspectorate 22 July 2021.PDF](#)
[Enclosure 3 to letter to Planning Inspectorate 22 July 2021.PDF](#)

Dear Sirs

Request by The Secretary of State dated 26 July 2021 for comments from various interested parties, including The Bristol Port Company

We act for First Corporate Shipping Limited, trading as The Bristol Port Company. We have seen the letter from The Secretary of State requesting comments from various interested parties on various matters, including specifically confirmation from our client as to the status of the agreement with the Applicant regarding the protective provisions within the proposed development consent order, and if an agreement has been reached, the agreed up to date set of protective provisions.

In response to that request, we attach a copy of our letter to the Planning Inspectorate dated 22 July 2021 together with its enclosures, which set out the current position as to the status of the agreement reached and contains information as to the extent of protective provisions which have been agreed, the provisions which remain outstanding and BPC's views on those outstanding provisions. A letter from Womble Bond Dickinson, solicitors for the Applicant to the Planning Inspectorate dated 21 July 2021 provides a similar update and explanation.

Please let us know if you require further information.

Regards

Wedlake Bell LLP

Louise Gowman
Partner



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Wedlake Bell



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BY EMAIL bart.bartkowiak@planninginspectorate.gov.uk

For the attention of Bart Bartkowiak
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Date 22 July 2021
Your ref TR040011
Our ref GOWL/FIR/0069/00051/GOWL
[REDACTED]
Direct Fax +44 (0)20 7395 3100
Email [REDACTED]@wedlakebell.com

Dear Sir

Application by North Somerset District Council for an Order Granting Development Consent for the Portishead Branch Line - MetroWest Phase 1 (the "Order")
Interested party reference PORT-S57657

1. We act for First Corporate Shipping Limited, trading as The Bristol Port Company ("BPC"), which is the statutory undertaker (harbour authority and competent harbour authority) for Bristol and owner and operator of the commercial port of Bristol.
2. During the Examination into the proposed Order, BPC was in discussion with North Somerset Council as applicant for the proposed Order (the Applicant) and Network Rail Infrastructure Limited in relation to how various matters arising from BPC's concerns about the proposed Order might be resolved, including by the inclusion in the proposed Order of appropriate protective provisions for BPC's benefit. Those discussions have progressed further since the close of the Examination and still continue.
3. The purpose of this letter is to provide an update to The Secretary of State as to the extent of the agreement now reached between BPC and the Applicant in relation to the form of appropriate protective provisions and an explanation of the matters which remain outstanding. We should therefore be grateful if this letter and its enclosures could be passed to The Secretary of State. We have seen a copy of a letter to you dated 21 July 2021 from Womble Bond Dickinson, solicitors for the Applicant, which among other things, provides a similar update and explanation (see item 4 in that letter).
4. As a result of discussions during the Examination, Part 5 of Schedule 16 to the draft DCO submitted by the Applicant at the close of the Examination on 19 April 2021 (DCO Document Reference 3.1 version 8) contained revised protective provisions for BPC's benefit. However, BPC considered these revised protective provisions remained inadequate. Since the close of the Examination, further discussions between BPC and the Applicant about the content of the protective provisions have taken place. As a result the Applicant has agreed to a further revised set of protective provisions for BPC's benefit. These further revised provisions are included in the amended form of draft DCO (DCO Document Reference 3.1 version 9) submitted with the Applicant's letter of 21 July and address some, but not all, of BPC's concerns which were unresolved at the close of the Examination.

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5. Enclosed with this letter as **Enclosure 1** is the form of the protective provisions for its benefit which BPC considers should be included in the proposed Order to address its remaining concerns. This form of the protective provisions has also been included by the Applicant in its note at enclosure 6 of its 21 July letter entitled 'Summary of remaining drafting issues between the Applicant and First Corporate Shipping Limited', as appendix 3. The difference between BPC's required form of the protective provisions and those now proposed in the Applicant's version 9 of the draft DCO is that BPC requires additional provisions to be included, and those additional provisions are shown in Enclosure 1 by the use of text in bold type. Otherwise, Enclosure 1 reflects the protective provisions now proposed by the Applicant.
6. BPC's reasons for requiring each of the provisions contained in Enclosure 1, including those shown in bold type, were set out in full in BPC's submission to the Examination on 14 April 2021 (Examination library reference REP7-050). To the extent they relate to the additional provisions shown in bold type in Enclosure 1 those reasons are repeated in the table in the appendix below by reference to the numbered paragraphs of Enclosure 1. These reasons make reference to two other documents submitted by BPC to the Examination on 14 April 2021, being a note relating to compulsory acquisition matters (Examination library reference REP7-049) and a note relating to the at-grade crossing at Court House Farm (Examination library reference REP7-051). Copies of these documents as previously submitted are enclosed as **Enclosure 2** and **Enclosure 3** respectively and are referred to in the table in the appendix in that manner.
7. BPC can provide additional submissions to The Secretary of State relating to the matters in this letter, if required.

Yours faithfully



Wedlake Bell LLP

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APPENDIX

<i>Added/amended paragraphs</i>	<i>BPC comment</i>
44: definition of "public path land"	This definition is relevant to paragraph 51(3)(a), as to which see below
45(2) & (3) and the words "Subject as set out in sub-paragraph (2)" at the start of paragraph 45(1)	Enclosure 3 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.
50(13)	For the reasons given in Enclosure 2 (particularly paragraphs 1.1.2 & 15 to 20.3), 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.
51(3)(a) to (e)	<p>In relation to all matters relating to compulsory acquisition, BPC repeats its submissions at paragraphs 3 to 6 of Enclosure 2 in respect of the application of, and the tests to be applied under, section 127 Planning Act 2008.</p> <p>Enclosure 2 (particularly paragraphs 1.1 & 7 to 20.3) sets out why paragraph 51(3)(a) is necessary.</p> <p>Enclosure 2 (particularly paragraphs 1.2, 21 to 25 & 27 to 33) sets out why paragraph 51(3)(b) is 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 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, paragraph 51(3)(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. Paragraph 51(3)(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. Paragraph 51(3)(e) is necessary to ensure such powers could not be exercised without BPC's consent.</p>

51(4)	<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>Enclosure 2 (particularly paragraphs 1.5 and 51 to 53) sets out why paragraph 51(4) is necessary in relation to the Marsh Lane track land and the rail link land.</p> <p>Enclosure 2 (particularly paragraphs 1.3 and 35 to 38) also explains why BPC's rights over the railway rights land 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>Paragraph 51(4) 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>
52(1)(c)	Enclosure 2 (particularly paragraphs 1.2.2, 1.4.1, 1.4.2, 34 & 39 to 47) sets out why this provision is necessary.
70(b)	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.

PART 1

Protection for First Corporate Shipping Limited

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

44. 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 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;

(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.

45.—(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.

46. 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.

47.—(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

48.—(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

49.—(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

50.—(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.

(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.

(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.

(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:

(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.

(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.

(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.

(8) 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 35 of Schedule 2 (Requirements), consult with BPC in relation to the content of all such surveys, measures and strategies.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

Acquisition and use of land

51.—(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 any rights of BPC over or in respect of the railway rights land or the highway access land; or 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.

(3) 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.

(4) 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 the railway rights land or the highway access land.

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

52.—(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 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;**
- (b) other than any construction access rights which may be authorised by or pursuant to the terms of this Order over the Marsh Lane track, the rail link land or parcel 05/75, 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; or**
- (c) 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.**

(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.

53.—(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.

54.—(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 55.

Works

55. 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.

56.—(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.

57.—(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 56(5) or 56(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 56—

- (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 56(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.

58. 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.

59. 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.

60.—(1) If any permanent or temporary alterations or additions to BPC's property, or any protective works under paragraph 56(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.

61. 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 56(5) and in implementing any environmental protection works under the provisions of paragraph 56(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.

62. 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.

63. 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.

64.—(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).

65. 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.

66. 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

67.— 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 and use any of BPC's apparatus in land must not be extinguished, suspended or interfered with 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

68. 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

69.—(1) 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

70. 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) all and any applicable conditions attached to any relevant consent, agreement or approval given by BPC for the purpose of this Part; and
- (b) **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.**

71. 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.

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

Planning Inspectorate reference TR040011

Interested party reference PORT-S57657

Note on behalf of First Corporate Shipping Limited trading as The Bristol Port Company (BPC) in respect of compulsory acquisition matters dated 14 April 2021

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

Statutory undertakers' land

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

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

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

Land subject to compulsory acquisition of all interests

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

Plot 5/50

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

10. the land is also required to provide a buffer zone between the fence of the compound and any area which may be publicly accessible, for the reasons explained in REP4-058 (in relation to para 2.1.8 of BPC's written representation).
11. The reason stated by the Applicant for the acquisition of 5/50 (Statement of Reasons, REP6-014) is:

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

Plot 5/27

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

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

16. BPC refers to its previous comments and representations about this parcel in:
- REP4-058 and REP4-059; and
 - REP6-052
17. BPC objects to the compulsory acquisition of 5/27 for the following reasons.
- 17.1 Its acquisition would disproportionately interfere with and/or prevent any future change in the use or layout of, or the redevelopment of, that part of the Port estate, including any realignment of the public bridleway LA8/67/10 that might be proposed as part of that re-organisation. The effect of the acquisition would be to remove from BPC's freehold ownership a sliver of land in the middle of an area that could otherwise be re-used or redeveloped, thus preventing the re-use or redevelopment of the whole, whether economically or at all. There is a finite amount of land available to BPC for port use and development at Royal Portbury Dock and BPC faces considerable pressure at all times to make the best and most efficient use of it and to demonstrate that it is doing so. The compulsory acquisition of land such as 5/27 would inevitably prevent BPC using this area of land efficiently or at all, would hinder necessary development at the Port and so cause serious detriment to the carrying on of BPC's statutory undertaking. There is no other land which would be available for BPC to purchase to replace 5/27.
- 17.2 The reason stated by the Applicant for requiring the acquisition of 5/27 (Statement of Reasons, REP6-014) is "*Realignment of the existing permissive cycling route*". BPC does not agree that the proposed realignment of the cycling route is necessary but, as previously indicated, it is prepared to accommodate it. Since Work No. 16 will only be of any use if and for so long as the permissive cycling route along the railway to which it connects is also permitted to be used, it would not be appropriate for BPC nevertheless to be permanently deprived of its land to provide a path that is unnecessary and may become redundant.
- 17.3 The Applicant agrees that the cycle path to be created as Work No. 16 would be permissive only, not a permanent route (see, for example, the Applicant's response to BPC's written representations (REP3-036) and the Applicant's responses to ExQ2 TT.2.7 (REP5-028)). It is therefore plainly inappropriate for BPC to be deprived permanently of the land on which it is sited.
- 17.4 BPC has confirmed that it is willing to accommodate the execution of Work No. 16 on its land provided the path created is a permissive path only (see REP4-058). The acquisition of 5/27 is therefore not required given the availability of this alternative.
- Plots 5/101, 5/102, 5/130, 5/131, 5/135 and 5/137***
18. These parcels make up a large area of land on and surrounding the permitted extent of work for Work No. 18.
19. BPC refers to its previous comments and representations about these parcels in:
- REP2-064;
 - REP4-058 and REP4-059;
 - REP5-048; and
 - REP6-047, RE6-048 and REP6-052.

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

Land subject to the compulsory acquisition of rights

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

Plot 5/75

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

- 23.1 those rights will conflict with BPC's proposal for the ecological buffer and may conflict with BPC's design for the improvement of the access onto Marsh Lane; and
- 23.2 if an access must be provided over 5/75, 5/85 and 5/86, then the ecological buffer is likely to be required to be located further within BPC's development site, which will considerably reduce the land available for development.
24. The purpose of the right sought over 5/75, 5/85 and 5/86 was amended by the Applicant in the revised draft DCO submitted at deadline 6 (Schedule 10). The access right is now required only to facilitate the inspection and maintenance of two features on the railway land, being an accommodation bridge and associated walls, embankments and structures (which is located adjacent to Plot 5/86) and a culvert, watercourse and head wall (which is located at the northern end of the stream crossing 5/85). It is therefore not necessary that the access route to these features occupies the whole of broad strip along the northern boundary of the development site proposed and to impose such a right would be disproportionate given the detrimental effect this would have on BPC's development. Given the pressures on its land for development (see 17.1 above) any loss of developable land will constitute a serious detriment to BPC's ability to carry on its statutory undertaking.
25. Further, an alternative to the acquisition of the right in the form proposed by the draft DCO is available: access could be instead provided to each feature over a more convenient route or routes within the completed development which would be equally, or more, convenient for the user and which did not deprive BPC of its land for development. BPC would be willing to enter into an easement with the appropriate party on suitable terms to provide these alternative accesses.
26. For the reasons given in 23, BPC also objects to the exercise of rights of temporary possession over parcel 5/75. To the extent access is required during construction to the two features referred to in 24, if BPC is able to provide an adequate alternative route, those powers should not be exercised, as set out in paragraph 59(1)(b) of BPC's protective provisions.

Plots 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55 (the rail link land) and Plots 5/103 and 5/112

27. The rail link land comprises the track of BPC's private railway, including a level crossing at a point where it is crossed by internal, private dock access roads. The railway, and its operation, are part of BPC's statutory undertaking.
28. Plot 5/112 is BPC's private internal road leading from Marsh Lane to the level crossing on the railway. Plot 5/103 is an area of land under the deck of the M5 bridge.
29. BPC refers to its comments and representations concerning the rights sought over these parcels, and in particular as the lack of clarity as to the precise nature and terms of the rights required, at:
- REP2-064, particularly paragraphs 4.8 and 4.9;
 - REP3-046;
 - REP4-058; and
 - REP5-049.
30. In Schedule 10 of the draft DCO, the Applicant seeks various permanent rights over BPC's railway, and consequently rights to use Plots 5/112 and 5/103 as an access and turning circle in order to access the railway to exercise those rights. The rights are drafted in a broad and non-specific manner. The rights include:

ENCLOSURE 2

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

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

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

Extinguishment of rights

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

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

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

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

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

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

Powers of temporary possession

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

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

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

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

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

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

Plots 5/103 and 5/170

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

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

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

Other construction access

48. Except for any use of the Marsh Lane track to which BPC may agree, BPC objects to parts of the Port estate over which powers of temporary possession are sought being used as or to create additional haul roads.

49. BPC has explained the concerns that arise from the use of haul roads on the Port estate in relation to the proposed use of the Marsh Lane track. The same concerns would arise if the Applicant sought to create further haul roads elsewhere. There are no other areas on the Port estate within the Order limits which would be suitable for use for construction access, and, so far as BPC is aware, no further haul roads on the Port estate are proposed by the Applicant or required in connection with the DCO scheme other than the Marsh Lane track and any access that might be required during construction over Plot 5/75.

50. While BPC does not wish to prevent powers of temporary possession being exercised generally over its land (except in relation to the areas specified in 39) it needs to prevent those powers being used to create further haul roads. BPC therefore requires a protective provision in the form set out in paragraph 59(1)(c) of BPC's protective provisions.

Suspension and overriding of rights

51. If and to the extent BPC agrees to the exercise of temporary possession over the Marsh Lane track land and the rail link land, the undertaker's use of those areas and facilities cannot and will not be exclusive to the undertaker: the track on the Marsh Lane track land and the railway on the rail link land must continue to be available for use by BPC, its customers and other authorised users. If this were not the case, significant disruption would plainly be caused during construction of the scheme to the interests of BPC and its customers in relation to their use of the Port and in connection with the carrying on of BPC's statutory undertaking.

52. The Applicant has stated (in REP3-036, at BPC-D2-006) that it does not intend to use its Order powers to extinguish the rights of other parties to use the Marsh Lane track. As noted by BPC in REP4-058, this commitment should be secured in the DCO. It should also be extended to the rights of BPC and others to continue to use the Port's railway.

53. BPC therefore requires protective provisions in the form of paragraphs 57(2) and 59(2) of BPC's protective provisions.

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 the easement relating to the at-grade crossing at Court House Farm dated 14 April 2021

1. This note is provided in response to the Examining Authority's request for information dated 29 March 2021, Annex C, questions for BPC.

Question

With regard to the timescales for the removal of the at grade crossing you refer to a deed of a grant of easement dated 4 September 2017 between Network Rail and First Corporate Shipping Limited can you provide a copy of this agreement with the relevant sections highlighted and/or provide a summary of what this document requires with regards to the removal of the at grade crossing and the construction of the vehicular bridge. action point 28 arising from Issue Specific Hearing 5 on 4 March 2021.

2. A full copy of the easement dated 4 September 2017 is attached, with the relevant provisions relating to its termination highlighted. The easement is referred to in this note as the Court House Farm easement.

Question

The BPC have advised that the principle point of contention with Network Rail Infrastructure Limited is when the BPC would be required to construct the vehicular bridge across the railway to replace the at grade crossing [Point 11, AS-052]. The BPC [CA.1.10, REP3-046] state that the DCO as drafted currently makes no provision to ensure that they have adequate time to construct the alternative crossing in accordance with the timescale envisaged by the planning permission and as previously envisaged by BPC and the Applicant.

Should this matter not be resolved by the end of the Examination could both the Applicant and the BPC indicate how they consider this matter could be secured through the DCO and provide appropriate wording.

Summary

3. It has not been possible for BPC and Network Rail Infrastructure Limited (NR) to reach agreement on the terms on which BPC will be permitted to construct a bridge across the disused railway in the vicinity of Court House Farm as an alternative to the current at-grade crossing. During the discussions, a key issue in contention has been NR's requirement that, under any agreement, BPC's construction of the bridge could not continue after the expiry of a fixed period from the date the DCO for the MetroWest scheme is made. NR further insists that BPC's right to use the at-grade crossing must cease at the end of that same, fixed period so that by then the crossing must also have been removed, regardless of whether the DCO scheme is to go ahead.

4. Despite constructive discussions, a draft of an agreement between BPC and NR relating to the construction of the bridge is not yet in circulation. While BPC anticipates that discussions with NR as to the terms of such an agreement will continue beyond the close of the Examination, in the absence of such an agreement now BPC needs to secure the continuation of its current access over the at-grade crossing for an appropriate period. It therefore requires a protective provision in the following terms:

"(1) 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.

(2) 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."

"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."

5. BPC provided the form of this protective provision to the Applicant, on a without prejudice basis, on 23 February 2021. The Applicant does not agree to its inclusion in the DCO.

Background

6. BPC refers to its previous comments and representations on this topic, including:

- REP2-064 (written representation) para 2.2.3 and 5.7;
- AS-052, para 11;
- REP3-046 (in respect of ExQ1 CA.1.10);
- REP5-049; and
- REP6-048 and REP6-051.

7. The at-grade crossing over the disused railway connects two vehicle transit storage compounds. The compounds are used for the transit storage of vehicles being imported by a vehicle manufacturer through Royal Portbury Dock. The two compounds are therefore used for the purposes of carrying on BPC's statutory undertaking. Access to the compound south of the disused railway is only available via the rest of the Port estate, first to the northern compound and then over the at-grade crossing. Access is not available to the southern compound direct from the public highway. If access between the two compounds over the at-grade crossing were prevented before BPC had had a reasonable opportunity to construct an alternative access (a bridge) across the railway, the carrying on of BPC's statutory undertaking would accordingly be subjected to serious detriment.

8. BPC must therefore be permitted adequate time to construct the new bridge over the disused railway, during which time it must be permitted to continue to use the at-grade crossing. BPC's current estimate of the time necessary to design and construct the bridge, as outlined in its oral case at ISH5 and later in its note to the ExA in response to action point 28 arising from that hearing [REP6-048 and REP6-051], is 15 months. BPC is not aware of any challenge to that estimate by the Applicant.
9. The time period proposed by NR within which BPC would be permitted to build the bridge, and at the end of which BPC's right to use the at-grade crossing must cease - and indeed by which BPC must also have removed the at-grade crossing - is less than the 15 months required by BPC's programme.
10. Further, NR's position is that this shorter period must start as soon as the DCO is made. BPC considers it would be manifestly unreasonable for BPC to be forced to expend considerable cost in first the detailed design and then actual construction of a bridge, and in the removal of the at-grade crossing, until it is clear that the bridge is required and that it is necessary that the crossing be removed.
11. The Court House Farm easement permits notice to be given by NR if and when the extent of the railway shown coloured green on the plan attached to it (referred to in the easement as the Property) is required by NR for the performance of its responsibilities as a provider of network services or for the purpose of the network business or for the purpose of railway and/or integrated transport-related development. In BPC's view, the site of the at-grade crossing cannot be required by NR for those purposes simply because a DCO is made granting the Applicant development consent for the proposed scheme, particularly when funding to implement that scheme has not been obtained and when no contractor has been appointed.
12. BPC entered into the Court House Farm easement in the knowledge that, if the disused railway were re-opened, BPC would need to give up and remove the at-grade crossing and build a bridge in its place. However BPC did not expect that it would be put in that position when the railway was not being re-opened or when it was not certain that it would be.
13. Despite this, to facilitate the DCO scheme's development, BPC would be willing to agree to start its design and construction programme for the bridge, and to incur the resulting cost, when all funding for the implementation of the scheme has been confirmed. However, it must then be allowed the full 15 months required by its programme, both as a period available to it for construction and as a period during which its rights in respect of the at-grade crossing cannot be curtailed.
14. Full funding of the DCO scheme will be available to the Applicant only on approval of the Full Business Case by North Somerset Council (Full Council), the West of England Joint Committee, the Committee of the West of England Combined Authority and the Department for Transport: see, for example, the Applicant's response to ExQ1 CA.1 5 [REP2-013] and the various approvals described in paragraphs 4.1 to 4.11 of the Funding Statement (DCO doc 4.2, APP-056). BPC therefore considers that the Court House Farm easement must not be terminated until, at the earliest, 15 months from this date.

Protective provision

15. Section 120(3) Planning Act 2008 provides that an order granting development consent may make provision relating to matters ancillary to the development for which consent is granted. The closure of the at grade crossing in this location is clearly the direct result of, and an impact of, the proposed development and, as with other crossings over the disused railway which it is proposed will similarly be closed, an ancillary matter for which, and for the mitigation of the effects of which, the DCO may make provision.

ENCLOSURE 3

16. Section 120(4) of the 2008 Act specifically includes among provisions that may be made by a development consent order the matters listed in Part 1 of Schedule 5. Included by paragraph 3 of that Part are provisions for the "*abrogation or modification of agreements relating to land*". The Court House Farm easement is an agreement relating to land, and so may be modified by a provision of the DCO.
17. BPC's proposed protective provision above accordingly modifies the Court House Farm easement to ensure that any termination of it could not occur until BPC has been allowed sufficient time (being 15 months) from the time when full funding for the DCO scheme is made available to construct the bridge, without otherwise interfering with the operation of the Court House Farm easement or the construction programme for the authorised development.
18. Given the serious detriment that would occur if BPC were to lose its ability to cross between its two vehicle compounds, BPC considers that this provision is both necessary and proportionate.