



MetroWest+

Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.78 – Update on Utility Providers and Comments on Proposed Protective Provisions (Schedule 16 of the DCO)

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Update on Utility Providers and Comments on Proposed Protective Provisions (Schedule 16 of the DCO)

Applicant's case under S127 and S138 Planning Act 2008 and Status of Negotiations with Statutory Undertakers

Update on position regarding representation of National Trust under S130 of the Planning Act 2008

20 September 2021

I: Introduction

1.1. At Deadline 5, the Applicant provided a progress report on the status of negotiations with each of the Statutory Undertakers listed in the Book of Reference, in response to **EXQ2 Written Question CA.2.2** - *"Provide a progress report on negotiations with each of the Statutory Undertakers listed in the Book of Reference (BoR) [APP-057] and an indication of whether these negotiations will be completed before the close of the Examination..."* (see document reference 9.33 ExA.WQ2R.D5.V1/REP5-029).

1.2 At the second Compulsory Acquisition Hearing, the ExA asked for Bristol Port and the Environment Agency to be added to the below Progress Report and for an update of this Report to be submitted at Deadline 6. The Applicant has also included Network Rail. A comprehensive S127 position statement was then provided by the Applicant at Deadline 7 – see document 9.64 ExA.FI.D7.V1 ("the S127 Position Statement").

1.3 Part A of this document provides an update regarding the position on utilities and similar parties generally.

1.4 Part B provides specific commentary on those parties where S127 of the 2008 Act continues to apply.

1.4 Table 1 of the S127 Position Statement was a summary of the up-to-date position with the Statutory Undertakers as at Deadline 7. The Updated Table 1 commences at page 4 of this document.

1.5 The Applicant has included additional information regarding S127 being engaged and the Applicant's position on the application of S127 and S138 of the 2008 Act, including where, in Schedule 16 of the Deadline 7 draft DCO the relevant protection for undertakers may be found.

1.5 Table 1 of the S127 Position Statement has been updated at 20 September 2021 to give the Secretary of State the most up to date picture of the position regarding utilities' positions on the dDCO. The update is principally by way of an additional column setting out the current position with the relevant utility.

1.6 Additional comments are made, to reflect the position as at 20 September 2021, in relation to the National Trust's position regarding its representation under S130 of the Planning Act 2008 See paragraph 3.1.2 below.

1.7 In Part B of this document specific schedules deal further with the position regarding:

Exolum Pipeline System Ltd – Schedule 1

National Grid Electricity Transmission PLC – Schedule 2

Bristol Port Company – Schedule 3

Western Power Distribution (South West) PLC – Schedule 4

1.8 Part C of this document is

Part A: Updates to Position Statement

2. Summary update regarding utilities at 20 September 2021

2.1 Since April 2021:

2.1.1. Agreement was concluded with Exolum Pipeline System Ltd (Exolum) on 20 September 2021. It is hoped that Exolum's S127 representation will be withdrawn imminently. No changes are proposed to the dDCO Schedule 16, part 6.

2.1.2. Agreement was concluded with First Corporate Shipping Limited (Bristol Port Company) on 20 September 2021 on most matters, including on the form of Protective Provisions in Schedule 16, Part 5 or the dDCO. Some changes are proposed to the provisions in Schedule 16 Part 5 of the dDCO to reflect that agreement. It is anticipated that Bristol Port Company will withdraw their representations, made under S127 of the 2008 save for one element in relation to the impact of the dDCO on the existing flat crossing over the disused Railway at Court House Farm (the route being located between the Portbury Dock Road and Marsh Lane overbridges - part of Land Plan/ Book of Reference plot 05/05).

2.1.3. Agreement has been reached, but not yet concluded, with Western Power Distribution (South West) PLC (WPD). No changes to the protective provisions are proposed (Schedule 16 Part 7). It is understood that, once the proposed agreement regarding protective provisions is completed, WPD will maintain its S127 representation in relation to its works and apparatus at Sheepway, authorised by The National Grid (Hinkley Point C Connection Project) Order 2016. This is pending agreement between the Applicant, Network Rail WPD and National Grid Electricity Transmission PLC in relation to those and other works. It is hoped an update will be provided to the Secretary of State on the position regarding WPD by 30 September 2021.

2.1.4. Revised Protective Provisions are included for National Grid Electricity Transmission PLC (NGET). These are not yet agreed, but the differences between the parties are now relatively limited. Progress is being made on an agreement between NGET, the Applicant, Network Rail and WPD. National Grid maintains its S127 representation. It is hoped an update will be provided to the Secretary of State on the position regarding National Grid by 30 September 2021. Changes to the protective provisions are proposed in Schedule 16 Part 8. The Applicant submits the revised protective provisions are sufficient to protect NGET's interests.

3. Update regarding other parties

3.1 In addition to the progress on utilities recorded above:

Freightliner Limited

3.1.1 Agreement was concluded with Freightliner Limited on 17 September 2021 and the Applicant believes Freightliner will withdraw its representation imminently.

National Trust for Places of Historic Interest or Natural Beauty (National Trust)

3.1.2 Agreement was concluded with National Trust on 17 September 2021 and the Applicant believes National Trust will withdraw its representation imminently.

3.1.3 The National Trust and the Applicant had previously agreed protective provisions which are contained in Part 10 of Schedule 16 to the dDCO.

3.1.4 The agreement between the parties includes provision for National Trust to withdraw its representations regarding the Order and provides National Trust's consent to the inclusion of its land as land affected by the Order.

Table 1: Summary of the up-to-date position with the Statutory Undertakers as at Deadline 7 - Updated for 20 September 2021

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
Bristol Water PLC	Water	No S127 not engaged	<p>No Statement of Common Ground in circulation, however detailed discussions have taken place but have concentrated on protective provisions.</p> <p>Following the Applicant providing a draft protective agreement, Bristol Water has since provided alternative terms which the Applicant is currently considering.</p> <p>Schedule 16 part 2 para 26 and 27 apply to relevant rights and relevant apparatus for the Purposes of S138 of the 2008 Act.</p>	No	Yes	Post end of the examination	None	<p>The Applicant continues to seek agreement with Bristol Water.</p> <p>The Applicant believes the protective provisions in Schedule 16 part 2 adequately protects the company.</p>

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
			The Applicant anticipates that this will be completed before the end of the examination.					
Exolum Pipeline System Ltd (formerly CLH Pipeline System Ltd)	Fuel pipeline	Yes S127 applies	<p>Discussions have taken place but have concentrated on a private agreement.</p> <p>A draft agreement has been reviewed by Exolum's legal representatives and comments returned. These comments have been considered by the Applicant in consultation with Network Rail. Further responses were provided to Exolum.</p> <p>Protective provisions for the benefit of Exolum have been included in the dDCO. See Part 6 of schedule</p>	Yes	Yes	Post end of the examination	None	The protective provisions at Schedule 16 Part 6 remain as submitted at Deadline 7. Agreement with Exolum was concluded on 20 September 2021. The Applicant believes the representations by Exolum will be withdrawn imminently. If this is not the case then the Applicant will provide further submissions on or before 30 September 2021.

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
			<p>16 of the draft Order.</p> <p>Schedule 16 part 6 para 74 and 75 apply to relevant rights and relevant apparatus for the Purposes of S138 of the 2008 Act.</p> <p>The Applicant believes the protective provision deal with all of the points made by Exolum for there to be no serious detriment to Exolum's undertaking. See Schedule 1.</p> <p>Negotiations are ongoing. Update as at 20 September 2021. Agreement has been reached.</p>					

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
GTC Pipelines Limited	Gas	No S127 not engaged	<p>The impact on GTC Pipelines apparatus is minimal and any works in close proximity will be dealt with via the New Roads and Street Works Act (1991) C3 (budget estimate) and C4 (detailed estimate) process prior to construction starting. Standard Protective Provisions for Gas Undertakers are included at Schedule 16, Part 2 of the draft DCO (document reference 3.1).</p> <p>Schedule 16 part 2 para 26 and 27 apply to relevant rights and relevant apparatus for the Purposes of S138 of the 2008 Act.</p>	No	No	N/A	N/A	-

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
National Grid Electricity Transmission PLC (NGET)	Electricity Transmission	Yes	<p>A Statement of Common Ground is largely agreed but not yet signed.</p> <p>A draft agreement has been circulated.</p> <p>NGET has proposed the inclusion of its own form of protective provisions. The Applicant does not believe the provisions proposed by NGET are proportionate. The Applicant has included its own form of Protective Provisions in the deadline 7 draft Order. NGET and the Applicant aim to discuss the draft protective provisions before the close of the examination.</p> <p>Schedule 16 part 8 para 97 and 98</p>	No	Yes	Post end of the examination	None	<p>The parties have engaged extensively since Deadline 7. Negotiations continue.</p> <p>Revised protective provisions are included in the dDCO provided at 20 September 2021, at Schedule 16, Part 8. The revised form was provided to the Secretary of State by the Applicant on 9 August 2021 as Annex 4 to the Applicant's letter to the Secretary of State.</p> <p>The Applicant believes these sufficiently</p>

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
			<p>apply to relevant rights and relevant apparatus for the Purposes of S138 of the 2008 Act.</p> <p>See further details in Schedule 2.</p>					<p>protect NGET and that accordingly the Secretary of State can be satisfied that NGET's undertaking will not be subject to serious detriment if the dDCO is made in its current form.</p> <p>The Applicant will further update the SoS by 30th September 2021.</p>
Openreach (British Telecommunications) PLC	Telecommunications	No S127 not engaged	A Statement of Common Ground is agreed and signed. However it needs to be corrected in one paragraph. Openreach will rely on the standard Protection for Operators of	No	No	N/A	N/A	-

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
			Electronic Communications Code Networks included in Schedule 16, part 3 of the draft DCO (document reference 3.1). Schedule 16 part 3 para 34 applies to relevant rights and relevant apparatus for the Purposes of S138 of the 2008 Act.					
Wales and West Utilities Limited	Gas	No S127 not engaged	No Statement of Common Ground in circulation, however detailed discussions have taken place but have concentrated on protective provisions. Wales and West Utilities has provided the Applicant with bespoke protective provisions. The Applicant has	Yes	No	April 2021 As soon as practicable	None Update as at 20 September 2021 – the position remains as at Deadline 7. Comments were to be provided by the utility in July 2021 but nothing has been received.	The Applicant continues to seek agreement with Wales and West Utilities Limited. The Applicant has included Protective Provisions in the draft DCO. See Part 9 of Schedule 16. The Applicant

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
			<p>reviewed these in consultation with Network Rail.</p> <p>The Applicant has included an amended version of the Protective Provisions in the deadline 7 draft DCO. See Part 9 of Schedule 16.</p> <p>Schedule 16 part 9 para 115 and 116 apply to relevant rights and relevant apparatus for the Purposes of S138 of the 2008 Act.</p>					believes these sufficiently protect Wales and West Utilities Limited.
Wessex Water Limited	Sewerage	No S127 not engaged	<p>A Statement of Common Ground has been agreed between the parties.</p> <p>Draft Heads of Terms have been issued for the acquisition of Wessex Water land. These are being</p>	No	yes	After the close of the examination	None	The position remains as at Deadline 7. Negotiations continue

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
			<p>reviewed by Wessex Water.</p> <p>Schedule 16 part 2 para 26 and 27 apply to relevant rights and relevant apparatus for the Purposes of S138 of the 2008 Act.</p>					
Western Power Distribution (South West) PLC	Electricity Distribution	Yes	<p>A draft Statement of Common Ground has been issued to WPD but is not yet agreed.</p> <p>The Applicant and Network Rail are seeking further discussions with WPD and its legal representatives to progress the issues raised by WPD in its written submissions to the examination.</p> <p>Protective provisions are included in the dDCO but these, and a side</p>	Yes	Yes	After the close of the examination	None	<p>The parties have engaged extensively since Deadline 7.</p> <p>Agreement has been reached with regard to all matters save WPD's works and apparatus relating to its works at Sheepway, authorised by The National Grid (Hinkley Point C Connection Project) Order 2016. As a</p>

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
			<p>agreement are still being negotiated between the parties.</p> <p>The Applicant has included its preferred version of the protective provisions – see Part 7 of Schedule 16 of the draft Order.</p> <p>The only issue not agreed for the protective provisions relates to how existing agreements for existing crossings over Network Rail's operational railway are dealt with. It is the Applicant's and Network Rail's position that where existing agreements manage the relationship between WPD and Network Rail those</p>					<p>result it is believed WPD's S127 representation will continue. It is hoped that agreement with NGET and WPD can be achieved shortly. Protective provisions are included in the dDCO provided at 20 September 2021, at Schedule 16, Part 7. The Applicant believes these sufficiently protect WPD and that accordingly the Secretary of State can be satisfied that WPD's undertaking will not be subject to</p>

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
			<p>agreements should enure.</p> <p>Schedule 16 part 7 paras 83 and 84 apply to relevant rights and relevant apparatus for the Purposes of S138 of the 2008 Act.</p>					<p>serious detriment if the dDCO is made in its current form.</p> <p>The Applicant will further update the SoS by 30th September 2021.</p>
Vodafone Limited	Telecommunications	No S127 not engaged	The impact on Vodafone apparatus is minimal and any works in close proximity will be dealt with via the New Roads and Street Works Act (1991) C3 (budget estimate) and C4 (detailed estimate) process prior to construction starting. Vodafone will rely on the standard Protection for Operators of Electronic Communications	No	No	N/A	N/A	-

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			<p>Code Networks included in Schedule 16, Part 3 of the draft DCO (document reference 3.1).</p> <p>Schedule 16 part 3 para 34 applies to relevant rights and relevant apparatus for the Purposes of S138 of the 2008 Act.</p>					
Virgin Media Limited	Telecommunications	No S127 not engaged	The impact on Virgin Media apparatus is minimal and any works in close proximity will be dealt with via the New Roads and Street Works Act (1991) C3 (budget estimate) and C4 (detailed estimate) process prior to construction starting. Virgin Media will rely on the standard Protection for	No	No	N/A	N/A	-

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			<p>Operators of Electronic Communications Code Networks included in Schedule 16, Part 3 of the draft DCO (document reference 3.1).</p> <p>Schedule 16 part 3 para 34 applies to relevant rights and relevant apparatus for the Purposes of S138 of the 2008 Act.</p>					
Bristol Port Company (BPC)	Transport	Yes S127 Applies.	<p>The Applicant has included protective provisions for the benefit of the Bristol Port Company. BPC will propose its own protective provisions but these are not accepted by the Applicant.</p> <p>The parties have however worked</p>	Yes	Yes	April 2021 20 September 2021	.	The Applicant can confirm that it has now reached agreement with the Port and the PPs submitted with the dDCO of 20 September represent the agreed PPs between the

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
			<p>together to reach as much commonality as possible.</p> <p>See part 5 of Schedule 16 to the Draft Order for the Applicant's preferred protective provisions.</p> <p>The Applicant provides further detail of progress at Schedule 3.</p> <p>The parties have engaged in negotiations for an agreement between the Applicant, Network Rail and the Port in relation to the use of Port land for the Scheme. It is hoped these will continue after the close of the examination.</p>					<p>Applicant and the Port.</p> <p>The Applicant expects the Port to withdraw its remaining objection save for one element between the parties relating to Court House Farm. The SoS has the Applicant's representations on Court House Farm which are summarised in enclosure 6 to its letter dated 21 July 2021 and updated in annex 2 to its letter dated 9 August 2021. See Part C of this document</p>

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
			<p>The Applicant's response to the ExA's Rule 17 request at response 1 to the questions raised by the ExA in relation to BPC, summarises the Applicant's position on the outstanding points between the parties and why the Applicant does not believe serious detriment arises in relation to the outstanding issues.</p> <p>Schedule 16 part 5 paras 51 and 67 apply to relevant rights and relevant apparatus for the Purposes of S138 of the 2008 Act.</p>					
Environment Agency	Environment	yes	The Applicant has included protective provisions in the deadline 7 draft DCO for the benefit of the Environment Agency. These are	Yes	No	April 2021	None	-

Company	Utility	Representation made/S127 Engaged?	Status of Discussions/ Applicant's position on S127/ S138	Bespoke Protective Provisions in the DCO	Private Agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements	Update as at 20 September 2021
			<p>now agreed with the Environment Agency. See Part 4 of schedule 16 of the draft Order.</p> <p>A SoCG is to be finalised before the end of the examination.</p>					
Network Rail Infrastructure Limited	Transport	No	<p>SoCG to be submitted at Deadline 7.</p> <p>Protective provisions for the protection of Network Rail have been included in the draft DCO at Schedule 16, Part 1 (document reference: 3.1).</p> <p>Schedule 16 part 1 para 4 applies to relevant rights and relevant apparatus for the Purposes of S138 of the 2008 Act.</p>	Yes	No	Agreed	None	The Statement of Common Ground was submitted at Deadline 7 – see document 9.3.15 ExA.SoCG-NRIL.D7.V1)

Part B: Schedules regarding specific S127 Parties

The Applicant's S127 Statement for Deadline 7 provided detailed schedules regarding the representations of Exolum Pipeline Systems Limited , National Grid Electricity Transmission PLC and First Corporate Shipping Limited (Bristol Port Company).

Sections 1 and 2 of this document update the Secretary of State generally and Table 1 provides a summary of the position for each utility as at 20 September 2021.

The following three schedules deal with each of Exolum Pipeline Systems Limited, National Grid Electricity Transmission PLC and First Corporate Shipping Limited (Bristol Port Company) in the same sequence as the Deadline 7 S127 Statement to provide the Secretary of State with the Applicant's latest position on the extant S127 representation by the relevant party. For clarity the Applicant has in addition included a schedule 4 for Western Power Distribution (South West) PLC.

Schedule 1: Detailed comments on Exolum Pipeline Systems Limited - UPDATE 20 September 2021 - Agreement has been reached with Exolum. Until Exolum has withdrawn its S127 representations then the Applicant relies on its representations at Deadline 7 and enclosure 6 to the Applicant's letter dated 9 August 2021.

Schedule 2: Detailed comments on National Grid Electricity Transmission PLC – Updated to reflect the position at 20 September 2021.

Schedule 3: Detailed comments on Bristol Port Company - UPDATE 20 September - Agreement has been reached with Bristol Port Company save for in relation to Bristol Port Company's easement relating to Court House Farm. In regard to Bristol Port Company's remaining S127 representation on that topic then the Applicant relies on its representations at Deadline 7 and enclosure 6 to the Applicant's letter dated 9 August 2021.

Schedule 4: Comments on Western Power Distribution (South West) PLC

Schedule 1: Detailed comments on Exolum Pipeline System Limited

UPDATE 20 September 2021: Schedule 1 has been removed as agreement has been reached with Exolum.

Until Exolum has withdrawn its S127 representations then the Applicant relies on its representations at Deadline 7 and enclosure 6 to the Applicant's letter dated 9 August 2021.

Schedule 2: Detailed comments on National Grid Electricity Transmission PLC

1. Introduction

In this note the following definitions are used:

- Applicant - North Somerset District Council as applicant for MetroWest Order
- HPCC Order - the National Grid (Hinkley Point C Connection Project) Order 2016 as amended
- MetroWest Order - The proposed Portishead Branch line (MetroWest Phase 1) Order
- NGET - National Grid Electricity Transmission PLC
- NRIL – Network Rail Infrastructure Limited
- WPD - Western Power Distribution Limited (South West) Plc

Application documents referred to are documents submitted for the application for the MetroWest Order unless otherwise indicated.

2. Applicant's position regarding the proposed interaction with NGET:

- 2.1 The Applicant accepted at Deadline 7 that specific protective provisions for NGET's interest regarding the HPCC Order would be appropriate.
- 2.2 The Applicant provides comments on NGET's Protective Provisions, as amended by the Applicant and included in the dDCO submitted at 20 September 2021. NGET has seen and commented on these revised protective provisions, which are not agreed between the parties.
- 2.3 The Applicant has also provided at Appendix 3 comments on NGET's Deadline 6 submissions, which now reflect the Applicant's position on including Protective Provisions specific for NGET.
- 2.4 For Deadline 7 the Applicant analysed the entries in the Applicant's Book of Reference to consider where NGET has an interest scheduled in the Book of Reference. The Applicant's commentary on the nature of these interests continues to be relied upon by the Applicant.

3. Comments on the Applicant's proposed Protective Provisions for NGET

3.1 The Applicant now accepts that for at least some of the interests of NGET scheduled in the Book of reference, comprising the land at Shipway Gate Farm S127 of the 2008 Act is engaged. The Applicant accepts that Protective Provisions should therefore be included and would ordinarily submit that the Protective Provisions in part 2 of Schedule 16 would be appropriate.

3.2 At Deadline 7 Applicant was content to include mutually beneficial Protective Provisions in the draft DCO and has now included these in the Deadline 7 draft Order.

3.3 The Applicant has further modified its position to bring the protective Provisions in Part 8 of Schedule 16 closer to those proposed by NGET. These revised protective provisions were provided to the Secretary of State on 9 August 2021 and are now included in the dDCO provide to the Secretary of State of 20 September 2021.

3.4 The Applicant provides at Table 2 commentary on the version of the protective provisions provided by NGET and the Applicant's own proposals now contained in Part 8 of Schedule 16 to the Order.

3.5 A clean copy of the protective provisions so changed is also provided at Annex 2. The version in Annex 2 is now also included in Part 8 of Schedule 16 to the 20 September 2021 version of the dDCO.

4. The Applicant's position as at 20 September 2021

4.1 Since the submissions for Deadline 7 the Applicant and NGET, together with WPD and NRIL have engaged in substantive discussions on the interaction between the HPCC Scheme and the MetroWest Scheme. The Applicant hopes that agreement can be reached and drafts are in circulation.

4.2 As a result the Applicant has further modified its position on protective provisions for the benefit of NGET, and has included protective provisions in a revised form at part 8 of Schedule 16 of the dDCO as submitted on 20 September. These are not agreed but the Applicant believes they are closer to being acceptable to NGET. Discussions will continue.

4.3 The Applicant proposes to further update the Secretary of State **on 30 September 2021**.

4.4 The Applicant therefore includes its own revised version of protective provisions provided by NGET in Schedule 16 to the Order, subject to the changes shown in the version provided at Annex 1 to this schedule. Additional comments are provided, where necessary in the amended table (Table 2) below, referring to the revised content of Part 8 of Schedule 16 of the dDCO.

4.5 The Applicant continues to rely on its responses to NGET's deadline 6 submissions in its S127 statement submitted at Deadline 7, as set out in Appendix 3 to the part of its S127 Statement relating to NGET. However since Deadline 7 the Applicant has sought to move closer to NGET's proposed Protective Provisions, as can be seen from the commentary provided above. The Applicant re-affirms its position that the proposed protective provisions mean that serious detriment will not arise.

4.6 The Applicant's case for powers over plots in which NGET's is scheduled as holding an interest in the Applicant's Book of Reference was set out in Appendix 4 of the Applicant's section of the S127 Statement that related to NGET. The Applicant continues to rely on the content of Appendix 4 relating to NGET's scheduled interests. The Applicant re-affirms its position that the proposed protective provisions mean that serious detriment will not arise.

5. Concluding comments

The Applicant submits that the new form of Part 8 of Schedule 16 sufficiently protects NGET's interests and is appropriate to the relationship between the two schemes and the nature of the Applicant as a local authority.

Table 2: Applicant's comments on NGET's draft protective provisions and the Applicant's submitted provisions for the benefit of NGET - Amended to reflect dDCO submitted 20 September 2021:

Para No NGET's Draft PPS)	Para No Sch 16 part 8 dDCO 20 Sept 2021	Topic	Key issues	NSC Position	NSC Suggested drafting
1	90	Application	none	Principles accepted	National Grid specifically referred to.
2	91	Interpretation:			
		Acceptable Credit provider	NGET requires suitable credit regarding liability	As the provisions are of mutual benefit this is not necessary or applicable. The Applicant is a local authority and should not need to provide additional credit or insurance.	deleted
		acceptable insurance	NGET requires suitable insurance with a £25m per event cover	The Applicant is a local authority and should not be required to provide insurance at this level	Amended to provide for cover of £25m and not specifically including either noting NGET's interest or a cross liabilities clause
		Acceptable Security	NGET requires a parent guarantee or bond to be provided	The Applicant is a local authority and should not be required to provide	Deleted Note also definition of

Para No NGET's Draft PPS)	Para No Sch 16 part 8 dDCO 20 Sept 2021	Topic	Key issues	NSC Position	NSC Suggested drafting
				additional security and in any event cannot provide a parent guarantee	Parent Company also deleted
		New definition: 2016 Order.		NSC has provided a new definition to reflect the need for consideration of the 2016 HPCC Order.	Definition inserted
3	92	Application of the New Roads and Street Works Act 1991	-	Accepted.	-
New Paragraph	93	Application of this Part and of Part 2 of Schedule 16	Clarification that the provisions of this Part apply instead of Part 2 of Schedule 16 (which generally apply to electricity undertakers)	-	Clarification provision – to make it clear that Part 2 of Schedule 16 does not apply to NGET.
New Paragraph	94	Mutual co-operation	Applying these Protective Provisions to the 2016 Order and for the parties to seek to avoid undue delay or conflict	For the mutual operation of the two Schemes the Applicant believes that paragraph 94 is required.	Wording included to provide for mutual co-operation
4	95	Apparatus of National Grid in stopped up streets	Where any street is stopped up under article 14 then NGET will continue to have the same rights and stopped up streets.	Accepted	None.
5	96	Acquisition of land	Control of acquisition of land by railway undertaker	Largely accepted but paragraph 5(2) deleted in part, to reflect that NGET	Paragraph 5(2) deleted in part.

Para No NGET's Draft PPS)	Para No Sch 16 part 8 dDCO 20 Sept 2021	Topic	Key issues	NSC Position	NSC Suggested drafting
				has powers to vest interests in land and has not yet exercised its powers to create the interests in land to which the paragraph refers	
6	97	Removal of apparatus	Provisions regarding removal of NGET's apparatus and its relocation	Minor drafting changes only	-
7	98	Facilities and rights for alternative apparatus	These provisions, which follow on from 6 (9 in the Applicant's draft), only apply as regards existing apparatus for the same reasons as stated above.	Accepted save for consequential drafting changes	Consequential drafting changes made to refer to "railway undertaker" and update paragraph references. For the reasons mentioned above these provisions only apply as regards existing apparatus.
8	99	Retained apparatus Now Apparatus	Principles for dealing with NGET's installed apparatus.	Largely accepted – updated to reflect other drafting changes and also to reflect that electricity towers to which the provision refers are not yet in existence	Principally consequential drafting changes. Sub-paragraph (3) amended to state that requirement to provide additional details in plans only necessary if pylons exist at the relevant time
9	100	Expenses	Provisions regarding NGET's expenses	Accepted save for consequential drafting changes	Consequential drafting changes made.
10	101	Indemnity	NGET seeks	This section has been	10(1)(b) altered to

Para No NGET's Draft PPS)	Para No Sch 16 part 8 dDCO 20 Sept 2021	Topic	Key issues	NSC Position	NSC Suggested drafting
			indemnification and the ability to injunct the Applicant for it carrying out its works.	substantially amended. The Applicant does not believe it should offer indemnification for activities on its own land, nor does it accept that it should be subject to injunctions. NGET is sufficiently protected the provisions of the expenses paragraph.	remove consequential loss provision and replaces by a requirement to make reasonable compensation in appropriate circumstances 10(3)(b) and 10(5)(6) deleted.
11	102	Enactments and agreements	Clarification of interaction between this Order and enactments or agreements.	Accepted	-
12	103	Co-operation	Provisions regarding cooperation between the parties	12(1) accepted. 12(2) deleted due to the provisions of new paragraph 94.	-
13	104	Access	Provision of alternative means of access	Largely accepted save for consequential drafting amendments.	Consequential drafting amendments made.
14	105	Arbitration	Provisions for dispute resolution.	Agreed in principle but specific exclusion of paragraphs of Part 8 of Schedule 16 not included	Consequential drafting amendments made.
15	106	Notices	Arrangements for the service of notices	Agreed save for consequential drafting amendments.	Consequential drafting amendments made.

Annex 1:

Applicant's mark-up of the NGET's proposed protective provisions

The following version of Part 8 of Schedule 16 of the dDCO shows the differences between NGET's proposed protective provisions submitted at deadline 4 and the Applicant's versions submitted as Schedule 16 Part 8 of the dDCO of 20 September 2021.

The Applicant's additional wording is shown blue.

NGET's wording, not included in the Schedule 16 Part 8 of the dDCO of 20 September 2021 is red font and struck through.

Green text is wording that has been moved but retained within the document.

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY UNDERTAKER

Application

90. 4. ~~For the protection of the undertaker referred to in~~ National Grid the following provisions of this Part of this Schedule ~~the following provisions~~ will, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

91.2. ~~In this Part of this Schedule—~~

“1991 Act” means the New Roads and Street Works Act 1991;

~~“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;~~

~~“acceptable insurance” means a~~ “acceptable Insurance” means a policy of public liability/third party liability insurance reasonably obtainable in the market and effected and maintained by the undertaker and/or its contractors with ~~a limit of indemnity cover~~ of not less than £25,000,000.00 (~~twenty five million pounds~~) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained Twenty Five Million Pounds per event for the construction period of the authorised works ~~which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”,~~ such policy shall include

~~(but without limitation): (a) ——— National Grid Electricity Transmission Plc;~~

~~(b) a cross liabilities clause; and~~

contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (~~ten million pounds~~ Ten Million Pounds) per event or £20,000,000.00 (~~twenty million pounds~~) in aggregate; ~~“acceptable security” means either: Twenty Million Pounds) in aggregate~~

“the 2016 Order” means The National Grid (Hinkley Point C Connection Project) Order 2016 as amended

~~(a) ——— a parent company guarantee from a parent company in favour of National Grid to cover the undertaker’s liability to National Grid to a cap of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £25,000,000.00 (twenty five million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or~~

~~(b) — a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker's liability to National Grid for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £25,000,000.00 (twenty five million pounds) (in a form reasonably satisfactory to National Grid);~~

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable it to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission plc (registered company number 2366977);

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

~~“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;~~

~~“undertaker” means the undertaker as defined in article 2 of this Order;~~

~~“National Grid” means National Grid Electricity Transmission plc (registered company number 2366977);~~

~~“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:~~

- ~~(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 6(295(2) or otherwise; and/or~~
- ~~(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 6(297(2) or otherwise;~~

~~“undertaker” means the undertaker as defined in article 2 of this Order.~~

~~92.3.~~ Except for paragraphs ~~4-95~~ (apparatus of National Grid in stopped up streets), ~~8-99~~ (retained apparatus), ~~9-100~~ (expenses) and ~~40-101~~ (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of ~~the undertaker,~~ National Grid the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

93. The provisions of Part 2 of this Schedule do not apply in relation to National Grid or any apparatus of National Grid

94. (1) The undertaker and National Grid will co-operate and work together to secure that the works proposed to be carried out by National Grid under the powers of the 2016 Order and the authorised works to be carried out by the undertaker under this Order will so far as reasonably possible be programmed, and arrangements for the carrying out, use and maintenance of those works will be made, so as, so far as reasonably possible, to avoid undue delay or any conflict arising between the carrying out, use and maintenance of those proposed works and the carrying out, use and maintenance of the authorised development

(2) Any consent, agreement or approval by National Grid or the undertaker under this Part of this Schedule must not be unreasonably withheld or delayed.

Apparatus of National Grid in stopped up streets

~~95.4.~~ ~~(1)~~ Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 14 (permanent stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to it in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) (2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (temporary stopping up of streets and public rights of way), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

~~96.5.~~~~(1=)~~ Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire or extinguish any land interest or apparatus or override any easement and/or other interest of National Grid, including any rights contained in ~~The National Grid (Hinkley Point C Connection Project) the 2016~~ Order ~~2016~~, otherwise than by agreement.

~~(2)~~As a condition of agreement between the parties in paragraph ~~5(1)~~~~96(1)~~, prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably ~~and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.~~

~~(3)~~The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

~~(4)~~Any agreement or consent granted by National Grid under paragraph ~~8~~~~99~~ or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under ~~sub-paragraph 5(1)~~~~paragraph 96(1)~~.

Removal of apparatus

~~97.6.~~~~(1=)~~ If, in the exercise of the agreement reached in accordance with paragraph ~~5~~~~96~~ or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed or requires that National Grid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with ~~sub-paragraph~~~~sub-paragraphs~~ (2) to (5) inclusive.

~~(2)~~If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph ~~7(1)~~~~98(1)~~ below) the necessary facilities and rights for the construction of alternative apparatus in other land of or land secured by the undertaker and subsequently for the maintenance of that apparatus.

~~(3)~~If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, as soon as is reasonably possible and on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

~~(4)~~ Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

~~(5)~~ National Grid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 56, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

~~98.7.~~ ~~(1)~~ Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

~~(2)~~ If the facilities and rights to be afforded by the undertaker and agreed with National Grid under paragraph ~~7~~(~~4~~98(1)) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter will be referred to arbitration in accordance with paragraph ~~14~~105 (~~Arbitration~~arbitration) ~~of this Part of this Schedule~~ and the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

~~99.8.~~ ~~(1)~~ Not less than 56 days before the commencement of any specified works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph ~~6~~(~~297~~2) or otherwise, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

~~(2)~~ In relation to specified works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the specified works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower existing at the time of the specified works or between any two or more electricity towers existing at the time of the specified works, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in ~~subparagraph-sub-~~ paragraph (2), include a method statement ~~describing;—describing—~~

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted ~~—or they have been settled by arbitration under article 56 (arbitration).~~

(5) Any approval of National Grid required under sub-paragraphs (2) or (3)—

~~(a)~~(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and

~~(6) or (8); and,~~

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the railway undertaker of that requirement, paragraphs ~~4 to 3~~ 90 to 92 and ~~5 to 7~~ 96 to 98 apply as if the removal of the apparatus had been required by the undertaker under paragraph ~~6(2)~~ 97(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

~~100.9.~~(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph ~~6(3)~~97(3); ~~and/or~~
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
 - (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
 - (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
 - (d) the approval of plans;
 - (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
 - (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.
- (2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.
- (3) If in accordance with the provisions of this Part of this Schedule—
- (g) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
 - (h) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 56 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (i) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (j) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

~~101.10.~~ ~~(1=)~~ Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (k) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (l) ~~indemnify~~ make reasonable compensation to National Grid for any other expenses, loss, ~~demands, proceedings, damages, claims,~~ penalty or costs incurred by ~~or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of~~ National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of ~~any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and~~ any damage or interruption to the extent that it is attributable to the

~~(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of National Grid with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 10 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this subparagraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 10.~~

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

~~until the following conditions are satisfied: (a) — unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security~~

~~for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and~~

(5) The undertaker is not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

~~(6) — In the event that the undertaker fails to comply with sub-paragraph 10(5) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.~~

Enactments and agreements

~~102. 11.~~ Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

~~103. 12.(1)~~ Where in consequence of the proposed construction of any of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph ~~6(2)~~⁹⁷⁽²⁾ or National Grid makes requirements for the protection or alteration of apparatus under paragraph ~~8~~⁹⁹, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

~~(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval to is required in relation to plans, documents or other information submitted by National Grid or the taking of action by National Grid, it must not be unreasonably withheld or delayed.~~

Access

~~104. 13.~~ If in consequence of the agreement reached in accordance with paragraph ~~5(1)~~⁹⁶⁽¹⁾ or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

~~105. 14. Save for differences or disputes arising under paragraph 6(2), 6(4), 7(1), 8 and 10(5) any~~ Any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 56 (arbitration).

Notices

~~106. 15.~~ The plans submitted to National Grid by the undertaker pursuant to paragraph ~~8~~ 99 must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Annex 2:

Clean copy of NGET's protective provisions as amended by the Applicant and included in the Draft Development Consent Order of 20 September 2021

PART 1

For the protection of National Grid as electricity undertaker

Application

90. For the protection of National Grid the following provisions of this Part of this Schedule will, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

91. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“the 2016 Order” means The National Grid (Hinkley Point C Connection Project) Order 2016;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable it to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission plc (registered company number 2366977);

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 0 or otherwise; and/or

may in any way adversely affect any existing apparatus the removal of which has not been required by the undertaker under paragraph 0 or otherwise;

“undertaker” means the undertaker as defined in article **Error! Reference source not found.** of this Order.

92. Except for paragraphs 0 (apparatus of National Grid in stopped up streets), 0 (retained existing apparatus), 0 (expenses) and 0 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

93. The provisions of Part 2 of this Schedule do not apply in relation to National Grid or any apparatus of National Grid.

94. (1) The undertaker and National Grid will co-operate and work together to secure that the works proposed to be carried out by National Grid under the powers of the 2016 Order and the authorised works to be carried out by the undertaker under this Order will so far as reasonably possible be programmed, and arrangements for the carrying out, use and maintenance of those works will be made, so as, so far as reasonably possible, to avoid undue delay or any conflict arising between the carrying out, use and maintenance of those proposed works and carrying out, use and maintenance the implementation of the authorised development.

(2) Any consent, agreement or approval by National Grid or the undertaker under this Part of this Schedule must not be unreasonably withheld or delayed.

Apparatus of National Grid in stopped up streets

95. —(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 14 (permanent stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to it in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (temporary stopping up of streets and public rights of way), National Grid will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

96. —(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire or extinguish any land interest or apparatus or override any easement and/or other interest of National Grid, including any rights contained in the 2016 Order, otherwise than by agreement.

(2) As a condition of agreement between the parties in paragraph **Error! Reference source not found.**, prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of National Grid and/or affects the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 0 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under paragraph **Error! Reference source not found.**

Provisions relating to existing apparatus

Removal of existing apparatus

97. —(1) If, in the exercise of the agreement reached in accordance with paragraph 0 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed or requires that National Grid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph 0, afford to National Grid to its satisfaction (taking into account paragraph **Error! Reference source not found.** below) the necessary facilities and rights for the construction of alternative apparatus in other land of or land secured by the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph 0, in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, as soon as is reasonably possible and on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker or in default of agreement settled by arbitration in accordance with article **Error! Reference source not found.** (arbitration).

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article **Error! Reference source not found.**, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph 0 or 0, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

98.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under paragraph **Error! Reference source not found.** above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter will be referred to arbitration in accordance with paragraph 105**Error! Reference source not found.** (arbitration) and the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

99.—(1) Not less than 56 days before the commencement of any specified works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 0 or otherwise, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to specified works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the specified works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an existing electricity tower or between any two or more existing electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted or they have been settled by arbitration under article 56 (arbitration).

(5) Any approval of National Grid required under sub-paragraphs (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid shall give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 90 to 92 and 96 to 98 apply as if the removal of the apparatus had been required by the undertaker under paragraph 0.

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

100.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 0; or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 56 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-

paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

101. —(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and

make reasonable compensation to National Grid for any other expenses, loss, damages, penalty or costs incurred by National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

Enactments and agreements

102. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

103. Where in consequence of the proposed construction of any of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 0 or National Grid makes requirements for the protection or alteration of apparatus under paragraph 0, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

Access

104. If in consequence of the agreement reached in accordance with paragraph **Error! Reference source not found.** or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction

Arbitration

105. Any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 56 (arbitration).

Notices

106. The plans submitted to National Grid by the undertaker pursuant to paragraph 0 must be sent to National Grid Plant Protection at plantprotection@nationalgrid.com or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

Schedule 3: Detailed comments on Bristol Port Company

The Portishead Branch line (MetroWest Phase 1) Order

Bristol Port Company – Applicant's S127 submissions, Responses to Submissions by BPC

1. Introduction

- 1.1 The Position Statement submitted by the Applicant at Deadline 7 provided a comprehensive response to the position set out by First Corporate Shipping Limited, trading as Bristol Port Company (referred to as BPC in this document) in relation to the relevant representations, written submissions and the many further submissions made by BPC during the course of the examination.
- 1.2 BPC has made a representation and prays in aid S127 of the Planning Act 2008. S127 is engaged as compulsory acquisition of land and new rights over land held by a statutory undertaker are proposed.
- 1.3 It is however, the Applicant's position that whilst S127 may be engaged, the Secretary of State can be satisfied that the land and new rights sought by the Applicant do not give rise to serious detriment so as to mean that the Order should not be made containing the relevant powers.
- 1.4 The Protective Provisions included by the Applicant in the dDCO submitted on 20 September 2021 are now agreed between the parties. Agreement relating to land has now been reached and concluded (on 20 September 2021). As a result no further commentary on the proposed protective provisions is provided.

2. Remaining Matters – Court House Farm Terminable Access

- 2.1 Schedule 16, Part 5 provides the following definitions in relation to the Court House Farm Terminable 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;
- 2.2 Paragraph 45 of Schedule 16 Part 5 states:

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.

- 2.3 Paragraph 45 prevents the Applicant from exercising powers of acquisition over the Court House Farm Terminable Access.
- 2.4 The easement was granted by Network Rail subsequent to services ceasing on the Portishead Branch Line (and is indeed recently granted, being dated 4 September 2017). It is not the historic crossing included for extinguishment in Schedule 9 Part 2 of the dDCO (crossing at 127 miles 12 chains) which the Applicant has included in the Order to ensure there can be no doubt that the crossing has ceased to exist. The Applicant does not believe that Bristol Port Company could prove any right to use that historic crossing given that for many years until 2017 the land on either side of the disused railway at this location was in separate ownership, meaning any accommodation rights would have ceased.
- 2.5 As a result of the exclusion of compulsory powers over the Court House Farm Easement contained in Paragraph 45 of Schedule 16 Part 5 (and by the exclusion recorded in the Applicant's Book of Reference for plot 05/05) there is no need for the additional protective provisions suggested by Bristol Port Company referred to in Bristol Port Company's Deadline 7 submission (REP-051). The additional wording put forward by Bristol Port Company would seek to improve on a commercial agreement negotiated in good faith by Bristol Port Company and Network Rail. The inclusion of the additional paragraphs sought by Bristol Port Company would impose terms that could have been put forward by Bristol Port Company in the negotiation. It would also materially impact on the ability of Network Rail to use its land for the purposes of its own statutory undertaking. The terms of the existing agreement can and will sufficiently regulate the interests of the parties and on the basis that the Order's powers do not affect Court House Farm Easement, the contract between Network Rail and Bristol Port Company will and should continue to apply without amendment. The additional wording sought by Bristol Port Company would protect it against an event that is not affected by the powers in the Order, and so cannot be justified.
- 2.6 The Court House Farm Terminable Easement is linked to the grant of planning permission to Bristol Port Company for development at Court House Farm. (Planning Permission 16/P/1987/F, dated 21 Dec 2016). Condition 16 states:

The use of the site for the storage of cargo in transit (e.g. motor vehicles) shall not be commenced until full details of the temporary at-grade vehicle crossing have been submitted to and approved by the Local Planning Authority. Notwithstanding the submitted plan: 42075A, the security fencing/gates shall not be erected across the railway corridor owned by Network Rail. In addition, the use of the site for the storage of cargo in transit (e.g. motor vehicles) shall not be commenced until a programme of works (including timescales) for the introduction and removal of the temporary at-grade vehicle crossing and construction of the vehicular bridge across the railway line so as not to impede the re-opening of the Portishead Branch Line have been submitted (in consultation with MetroWest and Network Rail) to and approved by the Local Planning Authority. Details of the at-grade vehicle crossing, bridge and above programme of works, once approved, shall be implemented in accordance with the approved details to the satisfaction of the Local Planning Authority. The temporary at-grade vehicle crossing must not be used after the Portishead Branch Line is re-opened to railway traffic.

Reason: To ensure that the safeguarded railway corridor is adequately protected in accordance with Policy CS10 of the North Somerset Core Strategy and Policy DM22 of the North Somerset Development Management Policies July 2016.

- 2.7 It is clear from the content of condition 16 that Bristol Port Company would be in breach of its planning permission if it were to impede the MetroWest scheme or to continue to use the at-grade crossing. This means that the existence of the Court House Farm Easement should not be regarded as an insurmountable impediment to the implementation of the Order being sought by the Applicant. It also suggests that the additional provisions for paragraph 45 of Schedule 16 Part 5 of the Order, as sought by Bristol Port Company could lead to a position that would breach the provisions of Paragraph 16 of planning permission 16/P/1987/F. This is not acceptable to the Applicant and should not be contemplated by the Secretary of State.

3. Conclusion

- 3.1 The Applicant believes that neither S127 nor S138 can apply to the Court House Farm Terminable Access as
- (a) Bristol Port Company's interest is excluded from compulsory acquisition, which means that S127 is not engaged; and
 - (b) Paragraph 45 of Schedule 16 Part 5 prevents the powers in the Order from being exercised to acquire or remove the Court House Farm Easement.
- 3.2 The powers sought are therefore not incompatible with BPC's rights, will not lead to BPC's rights being extinguished and BPC's rights are protected by the exclusion of powers of compulsory acquisition. Sections 127 and 138 are therefore not engaged in relation to the Court House Farm Easement.

Schedule 4: Comments on Western Power Distribution (South West) PLC

Agreement has been reached with regard to all matters save WPD's works and apparatus relating to its works at Sheepway, authorised by The National Grid (Hinkley Point C Connection Project) Order 2016. As a result it is believed WPD's S127 representation will continue. It is hoped that agreement with NGET and WPD can be achieved shortly.

Protective provisions are included in the dDCO provided at 20 September 2021, at Schedule 16, Part 7. The Applicant believes these sufficiently protect WPD sufficiently and that accordingly the Secretary of State can be satisfied that WPD's undertaking will not be subject to serious detriment if the dDCO is made in its current form.

Part C: Update provided to Secretary of State by the Applicant dated 9 August 2021 as annex 2

ANNEX 2

The Portishead Branch line (Metrowest Phase 1) Order

Note on Schedule 16 – Part 5 Protection for First Corporate Shipping Limited

Summary of remaining drafting issues between the Applicant and First Corporate Shipping Limited

1. INTRODUCTION

This document has been prepared by the Applicant to summarise for the Secretary of State's benefit the position regarding the provisions of Schedule 16 Part 5 of the draft Development Consent Order.

It reflects additional discussions between Bristol Port Company, Network Rail Infrastructure Limited and the Applicant regarding the content of the Protective Provisions for the benefit of First Corporate Shipping Limited (BPC) subsequent to the close of the examination into the Order.

The Secretary of State will note that there are a small number of paragraphs below in red font. These paragraphs indicate the matters that are still in dispute between the parties.

The parties have each seen this document and the Applicant believes the document reflects the parties' position accurately.

Appendix 1 to this document provides a revised "clean" version of the Applicant's proposed Protective Provisions, reflecting the content of this table. These are also included in Schedule 16 Part 5 of the revised draft DCO provided to the Secretary of State by the Applicant. The Secretary of State should note this is a version the parties have discussed and is as close to an agreed version as the parties are able to reach at this time. It should be noted the version is not agreed by Bristol Port Company, which seeks further amendments – see Appendix 3 below.

Appendix 2 provides a comparison version showing the changes between the previously submitted draft DCO Schedule 16 Part 5 and the position now proposed by the Applicant.

Appendix 3 shows in bold the further changes proposed by BPC to the draft provisions included in the Applicant's previously submitted draft DCO. This version is not agreed by the Applicant.

Where matters are not agreed the Applicant has given its reasons why it believes that its version of the Protective Provisions is preferred. The Applicant's position is set out in column 4 and its suggested drafting, where relevant, set out in column 5 of the table below. Bristol Port Company has seen this document but will submit separately its reasons for seeking the additional wording in the form of protective provisions provided at Appendix 3.

Where matters are set out in black font below in the table these are, it is believed, agreed between the parties. Matters in red font are matters that are not agreed between the parties.

2. TABLE OF PARAGRAPHS AGREED/NOT AGREED

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
43	Giving effect to PPS		Accepted	-	yes
44	Definitions				
	BPC's Apparatus	Moved from operative provisions	Agreed	As suggested by BPC	yes
	drainage works	"BPC" missing from definition	Agreed	As suggested by BPC	yes
	landscaping	No longer needed as landscaping issues now dealt with by revised landscaping plans.	Agreed	As suggested by BPC - deleted	yes
	Marsh Lane Track Land	Additional definition included by BPC	Agreed	As suggested by BPC	yes
	Public path land	Additional definition proposed by BPC	Not agreed	The reference to public path land is only within a provision proposed by BPC that is not agreed - see para 51(30 of Appendix 3	no

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
	Rail link land	Additional definition included by BPC	Agreed	As suggested by BPC	yes
	Specified work	All access works and drainage works added by BPC as new paragraph (c).	Agreed	As suggested by BPC	yes
45	Court House Farm	Extent to which Court House farm access is affected by the DCO	<p>The DCO does not seek any powers over the use of this temporary crossing of part of the Order land the use of which is dealt with by an existing agreement between NRIL and BPC. Consequently s.127 does not apply nor is it appropriate for the PPs to deal with it except to include a saving for the agreement.</p> <p>Paragraphs (2) and (3) of the BPC proposed draft (see Appendix 3) are not</p>	Paragraphs (2) and (3) of the BPC proposed draft (see Appendix 3) are not agreed.	<p>Para 45(1) is agreed save for the proviso referring to the subsequent paragraphs in BPC's draft.</p> <p>Paragraphs (2) and (3) are not Agreed</p>

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
			agreed and should not be included in the PPs as the Order powers will not be used to terminate the Court House Farm access arrangements which are instead regulated by condition 16 of planning permission 16/P/1987/F issued by the local planning authority.		
46	Application by the undertaker for the Secretary of State's consent under article 10	-	Agreed	As drawn	yes
47	Agreements	-	Agreed	As drawn	yes

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
	under article 11 (agreements with Network Rail)				
48	Watercourses and drainage:	-	Agreed	As drawn	yes
49	Surveys	-	Agreed	Agreed	yes
50	Streets, access and public rights of way	Seeks controls over use of streets etc BPC proposed new para (8) regarding surveys of Marsh Lane Track and new para (13) regarding BPC controls over the opening of new permissive cycle track and public bridleway	Paras (1) – (7) agreed New Para (8) as proposed by BPC is agreed. Remainder of paras (9) to (12) agreed. New Para (13) in Appendix 3 is not agreed. The Applicant remains willing to agree with BPC a licence (for Work 16) and a dedication (Work No. 18)	Agreed in part. New Para (13) in Appendix 3 is not agreed and should not be included in the PPs.	Agreed in Part. New Para (13) is not agreed.

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
			<p>but in both situations until such agreement is in place and capable of having full effect the Applicant cannot agree to the control over the authorised development sought. Neither Work is on land that could not be taken without serious detriment to the BPC's undertaking. Work No. 16 is on <u>inaccessible scrub</u> land that is overground <u>with a large prickly Hawthorne bush.</u> and within a triangle of land bounded by the disused railway, the approached to the bridge carrying the highway of Marsh Lane over the Railway and the Marsh Lane track, a public</p>		

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
			<p>bridleway. Work No. 16 - is an integral part of the project because currently a section of NCN26 is located over the top of the dis-used railway and therefore this section of NCN26 has to be diverted. This section of the NCN26 is a permissive pedestrian and cycle path via a license issued by NR to Sustrans. The Applicant is merely seeking to divert this section of the path and because the diversion will be on BPC land a new licence is sought by BPC to NSC but in its absence the Applicant must retain the power to provide this small diversion . The Applicant does not have any</p>		

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
			<p>proposals to designate work 16 as a bridleway.</p> <p>Work No 18 is on land beneath the M5 and or on land that forms part of an ecological area that is largely waterlogged.</p> <p>Work No 18 is also an integral part of the project because horses have been using the NCN26 where its alignment goes under the M5 via the railway under-bridge, for many years and without Work No 18 there would be serious risks to public safety. Currently the NCN26 at this location does not have a width restriction so horses have the full width of the under-bridge to avoid close</p>		

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
			proximity with other users of the path ie pedestrians and cyclists. Although the NCN26 will be retained through the under-bridge post re-opening of the railway, the width of the path will be restricted to 2.6 meters. It is not possible to increase this width because the amount of safe working space (known as cess) next to the railway has already been reduced within agreed railway design and there is no margin to reduce this further. From one end of the under-bridge to the other is a distance of over 60 meters (due to the four lanes and hard shoulder in each direction of the M5		

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
			<p><u>above). Without work 18, there would be serious risks to public safety because horse riders, pedestrians and cyclists would be forced into very close proximity to one another given the narrow width (2.6m) and long length (60m) of this section of the NCN26.</u></p> <p><u>Furthermore, the public safety risk would be exasperated further due to the possibility of a horse bolting upon hearing the sudden sound of an approaching passenger train, which at this location is likely to be in excess of 50 mph. Work No 18 mitigates this risk by providing an alternative</u></p>		

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
			<p>path for horses to the north over BPC land which is prominently a marsh and will connect into an existing bridleway on the BPC estate but outside of their secure perimeter fence.</p> <p>As with Work No 16, In the absence of an agreement for the dedication of the land as a bridleway the Applicant must retain the power to provide a bridleway.</p> <p>In neither case is the land use by BPC for activities intrinsic to its undertaking.</p>		
51	Acquisition and use of	BPC looks for an absolute prohibition on CA for land and new rights.	Additional wording inserted at para 51(1) and 51(2) (see Appendix 2) by	Include additional wording inserted at para 51(1) and 51(2) (see Appendix 2).	No

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
	land/ Apparatus of Port – S271 TCPA 1990 etc	BPC seeks additional controls over the exercise by the Applicant of powers ancillary to its powers of compulsory acquisition	<p>BPC to protect its rights and apparatus is agreed.</p> <p>Controls over land acquisition powers removed. If the Secretary of State has decided the limited acquisition powers sought over BPC's land are acceptable and do not give rise to serious detriment, then the protective provisions should not further control the acquisition power. The only freehold power the Applicant now seeks is to create a new bridleway described at Work No 18 and referred to above. over land currently used as scrub to the east of the M5 Motorway. New rights are sought over BPC's railway</p>	Exclude additional provisions relating to controls over compulsory acquisition -see (Appendix 3 para 51(3)); and controls over powers ancillary to compulsory acquisition – see Appendix 3, para 51(4)).	

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
			<p>but only to ensure that the connection to the Port by rail is maintained and can operate safely. On that basis it is clear that serious detriment does not arise.</p> <p>The provisions in para 51 (4) of Appendix 3 are not required as sufficient protection is afforded by Para 51 (1) and (2).</p>		
52	Use of land and execution, maintenance and use of the authorised development	<p>52 (1)(a) and (1)(b) – restrictions on exercise of temporary powers have been accepted.</p> <p>Appendix 3, para 52 (1)(c) - The restriction on powers of temporary possession over Marsh Lane track land or the rail link land or parcels 5/103 and 5/170 is not agreed</p> <p>BP's suggested para (2) seeks</p>	<p>Para 52 (1)(c) of Appendix 3 - The restriction on powers of temporary possession over Marsh Lane track land or the rail link land or parcels 5/103 and 5/170 is not agreed as the Applicant and its contractors may require the powers sought during the construction of the</p>	<p>Controls over temporary possession not accepted. Para 52 (1)(c) of Appendix 3 is accordingly not included</p> <p>The new Para 52(2) (see Appendix 2) is agreed and has been included.</p>	<p>Restrictions on temporary powers not agreed (see para 52 (1)(c) of Appendix 3)</p> <p>Remainder of drafting agreed</p>

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
		clarification that the powers sought by the Applicant must be in common with BPC and others benefiting from the use of the relevant land is accepted	authorised development. The Applicant believes that sufficient protection for BPC exists if this power referenced in this paragraph is exercised. The new Para 52(2) (see Appendix 2) is agreed.		
53	Surveys and repairs	-	Agreed	Agreed	yes
54	programme	-	Agreed	Agreed	yes
55	Works	Compliance with drawings and limitation on ancillary works	This paragraph is now agreed	Agreed	yes
56		-	Agreed	Agreed	yes
57	Implementati on of works	-	Agreed	Agreed	yes
58	Affording	-	Agreed	Agreed	yes

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
	facilities/providing information by Undertaker				
59	Affording facilities/providing information by BPC	-	Agreed	Agreed	yes
60	Alterations to BPC Property	-	Agreed	Agreed	yes
61	Payments etc	BPC requires capitalised sums for additional environmental protection works it requires under para 56(6)	Agreed	Agreed	yes
62	Post construction maintenance	-	Agreed	Agreed	yes

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
	of works				
63	Additional expenses of BPC		Agreed	Agreed	yes
64	Payment of costs etc		Agreed	Agreed	yes
65	Provision of estimates by BPC		Agreed	Agreed	yes
66	Reasonableness of charges		Agreed	Agreed	yes
67	BPC's Apparatus	Definition of apparatus moved to definitions section	agreed	Agreed	yes
68	Port's Railway	-	Agreed	Agreed	yes

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
69	Trees and other vegetation	-	Agreed	Agreed	yes
70	General	Extension of the protective provisions to control compliance with a separate private agreement proposed to be agreed by the parties known as the construction protocol	The applicant believes this additional constraint is not needed and is not appropriate for Protective Provisions . It is not appropriate for the PPs to be extended to govern compliance with the terms of a separate private agreement that the parties may conclude and which would operate outside the terms of these PPs. Compliance with the terms of such agreement must be properly governed by the terms of such agreement itself.	Delete	no

1.	2.	3.	4.	5.	6.
Para No in attached draft schedule 16 part 5 of dDCO	Topic	Changes proposed by BPC from version at close of examination and remaining issues	Applicant's Position	Applicant's Suggested drafting	Draft agreed with BPC
80	Disapplication of Article 49		Agreed	Agreed	yes

APPENDIX 1

Revised “clean” version of the Applicant’s proposed Protective Provisions

PART 15

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;

“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. 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.

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.

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.

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; or
- (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.

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

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.

APPENDIX 2

Comparison between previously submitted draft DCO Schedule 16 paragraph 5 and position now proposed by the Applicant

~~THE PORTISHEAD BRANCH LINE (METROWEST PHASE 1) ORDER 202X~~

PROTECTIVE PROVISIONS

PART 25

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—

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

~~“landscaping works” means—~~

~~(a) removing, cutting back, felling, lopping, pruning or reducing in any way any hedge, hedgerow, tree, shrub or other vegetation on BPC’s property; and~~

~~(b) planting new or replacement hedges, hedgerows, trees, shrubs or other vegetation on BPC’s property~~

~~and includes, without limitation on the scope of the foregoing, any works on BPC’s property under article 43 (felling or lopping of trees) or article 44 (hedgerows);~~

“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;

“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—

- (g) that part of Work 1C that is on the Port’s railway;
- (h) the whole of Work Nos. 14, 14A, 15, 16, 16A, 16C, 18, 19 and 20;~~and~~
- (i) all access works and drainage works; and
- (j) ~~(e)~~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. 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.

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 LA/8/67/10 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) (7) 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) (8) 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) (9) 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) (10) The undertaker must not exercise any powers under article 13, article 15 or article 46 (traffic regulation) over or in respect of any part of BPC's property or any dock public road after completion of construction of the authorised development.

Acquisition and use of land

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

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

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; or
- (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 ~~or parcels 05/75, 05/103, 05/104, 05/107, 05/108, 05/165, 05/171, 06/25, any part of 05/112 that is not part of the Marsh Lane Track~~ 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.

(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~~ conditions.

- (a) in respect of all or any of Work No. 1C on BPC ~~Property'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. ~~19-18~~ 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. ~~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).

~~(2) In this paragraph "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.~~

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 all and any applicable conditions attached to any relevant consent, agreement or approval given by BPC for the purpose of this Part.

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.

APPENDIX 3

Comparison showing changes proposed by BPC to draft provisions included in Applicant's
previously submitted draft DCO

PART 35

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—

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

(g) that part of Work 1C that is on the Port’s railway;

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

(i) all access works and drainage works; and

(j) 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 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.