

PORTISHEAD BRANCH LINE (METROWEST PHASE 1) DEVELOPMENT CONSENT ORDER

DRAFTING NOTE ON THE SECRETARY OF STATE'S "MINDED TO" DRAFT DCO

1. INTRODUCTION

1.1 This note analyses the Secretary of State's indication of being minded to make the MetroWest Order.

1.2 The table below contains comments on the development consent order as provided by the Secretary of State and as compared with the final version of the draft DCO (dDCO) proposed by North Somerset District Council (NSDC). This was the eleventh version of the dDCO as submitted to the Secretary of State (SoS).

1.3 We have identified some errors in the DCO that require correction.

2. TABLE OF KEY CHANGES AND COMMENTS

2.1 The Secretary of State has made a number of changes to the order. The majority are accepted by the Applicant.

2.2 The table below does not deal with each change but focuses on matters of importance, where there is some level of significance regarding what the order now says.

2.4 The principal issues to focus on are:

ARTICLE 21 – ACCOMODATION AND OCCUPATION CROSSINGS

2.5 This article has been amended by the Secretary of State. **The practical effect is that a number of level crossings for which there is no provision for alternative (because they are redundant and have not been used for many years) would have to be replaced.**

2.6 The purpose of the separating out into different parts of Schedule 9 was to make sure that some crossings could be closed without a replacement being provided. The crossings referred to in the changed Article 21 (3) and part 2 of Schedule 9 are very historic and unused for many years so do not need to be replaced – as is clear from the heading of Part 2 of Schedule 9. No one challenged this approach in examination.

2.7 The scheme underlying the Order would not be capable of implementation as currently drafted.

REQUIREMENT 14 – AVON GORGE WOODLANDS SAC

2.8 This is a minor change but one that needs to be made. The order has been amended to require consultation with DEFRA as well as Natural England. Whilst instructions are needed we expect the change itself is acceptable. What does need changing however is that there is no definition of DEFRA in the order and this needs to be amended.

REQUIREMENT 30 – CLANAGE ROAD, BRISTOL

2.9 The changes made to DCO Requirement 30, in particular that “.....[to show the proposed levels for the flood compensation mitigation area to be 7.3m AOD.....](#)”, are a major concern as a level of 7.3m AOD may not be achievable.

2.10 The current ground level is 7.5m AOD and the Applicant proposed to lower the level to 7.4m AOD. Lowering the level by a further 10cm to 7.3m AOD presents a number of challenges:

(a) There are a number of utilities located within this site including; a culverted watercourse, surface water drain/sewer and a foul sewer. These all need to have sufficient depth below ground according to the relevant technical requirements of the utility company owners. The

utilities will require protection measures over the top of apparatus and the need to maintain a minimum depth below ground level for the buried apparatus. This is particularly the case in the context of the Applicant's proposed use to operate HGV low loaders within the compound.

- (b) Lowering the land by a further 10cm will affect the Applicant's proposed ramp design, given the change from the ground level to the track level. Lowering the land by a further 10cm will result in either the length of the ramp being increased or the gradient of the ramp being increased. Lengthening the ramp is problematic because there may not be sufficient space while retaining the ability to operate a HGV low loader, given the constrained site size. Increasing the gradient of the ramp is problematic as that may not accord with engineering and safety design standards.
 - (c) Lowering the land by a further 10cm could cause the compound to be water logged for periods of time which could have a detrimental impact on the usability of the compound for Network Rail. This could be problematic as Network Rail need to have the ability to use this compound/ access point at all times for the safe operation of the railway, to respond to any incidents arising on the railway.
- 2.11 The modified Requirement 30 text proposed by the ExA and Secretary of State could present major deliverability challenges for the Applicant.
- 2.12 We believe there may be other design solutions available, that would not necessarily involve lowering the ground to 7.3m AOD, but still achieve the required flood storage capacity.
- 2.13 These alternative solutions can be explored during the detailed design stage which is scheduled to commence in the coming months, in consultation with the relevant planning authority and the Environment Agency. Requirement 30(3) has been amended to provide for alternative design solutions in a mark up of the Order accompanying this note.

SCHEDULE 16 – BRISTOL PORT COMPANY

- 2.14 There is an error in paragraph 50(4) - "lane" has been used instead of "land". The Port company's solicitor has also spotted a number of typos which are also shown on the markup of the Order provided with this note.

SCHEDULE 16 – NATIONAL GRID PROTECTIVE PROVISIONS

- 2.15 There are a couple of points regarding the National Grid protective provisions:
- (a) Paragraph 93 the words "implementation of the" have been inserted and this appears to be incorrect.
 - (b) There is a clear need for correction in the fact that the words "railway undertaker" has been used in the protective provisions but there is no definition of railway undertaker. This is ambiguous because it could be NSDC or Network Rail. It does seem clear however that it should be NSDC.

TABLE OF PROPOSED CHANGES TO dDCO VERSION

ISSUED BY SECRETARY OF STATE

Provision	SoS' Change	WBD Comment
Article 9 Benefit of Order	-	Consequential change as a result of change to Article 27 – reference to Article 27 now removed
Article 21 Accommodation and Occupation Crossings	The article has been modified so that it does not work. For the accommodation crossings listed in Part 2 of Schedule 9 no alternative is proposed. The modification requires the crossing to not be closed until an alternative is in place. No alternative is provided for in the Order.	Article needs correcting. It should read: Paragraph (1) takes effect with respect to the extinguishment of the public or private rights of way (if any) specified in column (3) of Part 2 of Schedule 9 by means of the facilities specified in column <u>columns</u> (1) and (2) of that Part 2 of that Schedule 9 on the date this order comes into force. on the date this order comes in to force.
Article 27 Compulsory acquisition of rights or imposition of covenants	The Secretary of State has imposed a prior consent requirement for the transfer of powers in article 27	The change means that the article 27(6)b) is not needed. As a result we suggest it is deleted. There is a consequential change to article 9, listed above.
Requirement 14 – Avon Gorge Woodlands SAC	Requirement 14(7) has additional reporting requirements – monitoring reports to be provided to DEFRA As well as Natural England.	Definition of DEFRA needs to be added.
Requirement 30 - Clanage Rd Bristol	R30(3) is altered to require a new version of the compound plan, which must show the proposed levels for the flood compensation mitigation area for approval by EA	(3) Prior to the first use of Work No. 26 as a permanent maintenance compound either: (a) the Clanage Road compound, landscaping and access plan (Plan ref: 46470.BQ.04.20-261 rev T) must be redrawn to show the proposed levels for the flood compensation mitigation area to be 7.3m AOD; and the redrawn plan must be

Provision	SoS' Change	WBD Comment
		<p>submitted to the relevant planning authority for approval in consultation with the Environment Agency. The regrading of the mitigation area must be carried out in accordance with the details as approved and the levels must thereafter be maintained or</p> <p>(b) details of an on-site flood storage scheme or other works to provide adequate flood compensation mitigation,</p> <p>must be submitted to the relevant planning authority for approval in consultation with the Environment Agency. The mitigation must thereafter be carried out in accordance with the approved details and maintained thereafter.</p>
Schedule 6 part 2	Between points CT7 <u>CT6</u> and CT8 shown on Sheet 1 of the new highways plans	CT6 is no longer on the plan. The correct reference should be CT7.
Schedule 16 – Bristol Port Company Protective Provisions	In BPC's PPs the SoS has made some amends on page 110 that require amendment via a correction order if they are made as such. See para 50(4): "benefit of which is vested in or enjoyed by BPC affecting the rail link or the Marsh Lane track lane". This should state the rail link land or the Marsh Land track land	Lane to be replaced by land in para 50(4) A number of typographical errors in the Part have also been dealt with.
Schedule 16 – NGET Protective Provisions	Reference throughout has been inserted to "railway undertaker" but there is no definition of railway undertaker	Definition of railway undertaker inserted at para 90

Provision	SoS' Change	WBD Comment
Schedule 16 – NGET Protective Provisions	Para 93 incorrect	" of the implementation " needs to be removed
Schedule 17 – Certified documents	New highways plans changed to "new highways plan"	Revert to plans for consistency with revised definition in Article 2

Womble Bond Dickinson

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