



MetroWest+

Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.15 ExA.CAH1.D3.V1 – Applicant's Oral Case and response to Representations at the Compulsory Acquisition Hearing 1 (CAH1)

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The proposed Portishead Branch Line (MetroWest Phase 1) Order

Applicant's response to Representations at the Compulsory Acquisition Hearing Held on 4 December 2020 at 10am

1. Introduction

- 1.1 A Compulsory Acquisition Hearing (**CAH**) for the Portishead Branch Line – MetroWest Phase 1 (**DCO**) application was held virtually on Microsoft Teams on Friday 4 December 2020 at 10am.
- 1.2 The Examining Authority (**ExA**) invited the Applicant to respond at the Hearing but also in writing following the CAH. This document summarises the responses made at the CAH by the Applicant and also seeks to fully address the representations made by Affected Parties, Interested Parties and other parties attending.
- 1.3 The Applicant has responded to the topics raised by each of the attending parties in the order the ExA invited them to speak provided cross-references to the relevant application or examination documents in the text below. Where it assists the Applicant's responses, the Applicant has appended additional documentation to this response document.

2. The Applicant's Statement of Case for the Compulsory Acquisition and Temporary Possession of Land

- 2.1 At the CAH the Applicant set out its statement of case for the compulsory acquisition and temporary acquisition of land pursuant to the DCO application. The ExA invited the Applicant to submit its full statement of case in written submissions following the CAH as there was limited time to present this at the CAH.
- 2.2 The Applicant's statement of case is set out below.

2.3 Overview of the DCO Scheme

- 2.3.1 The DCO Scheme is for the restoration of passenger services to a railway from Portishead to Ashton Junction, comprising reopening the railway from Portishead to Portbury Junction and associated works between Portbury Junction to Ashton Junction.
- 2.3.2 With the exception of land at Quays Avenue, Portishead, all of the land required for the railway alignment, is already in the freehold ownership of either the Applicant or Network Rail.
- 2.3.3 Additional land or rights over land is however required:
 - (a) for the construction of the DCO Scheme; and
 - (b) to support the operation of a modern and robust passenger rail service.
- 2.3.4 In addition compulsory acquisition of land is required for mitigation of the identified environmental impacts arising from the restoration of the railway.
- 2.3.5 Further, temporary powers are sought over land to facilitate the construction of the railway.

2.4 The Case for Compulsory Powers

- 2.4.1 The proposed interference with existing interests in land sought is for a legitimate purpose.

- 2.4.2 The Applicant's detailed analysis of the justifications for the Order Land is provided in Schedule 1 to the Revised Statement of Reasons – Document AS-016.
- 2.4.3 For each plot there is set out the reason given for the proposed acquisition. Throughout there is a clear and legitimate purpose for the powers sought - enhancing the local rail network between Bristol and Portishead. Supporting that purpose is clear policy justifications in the National Networks NPS and local planning policy support.
- 2.4.4 The linear route of the DCO Scheme reflects the historic (and existing) railway, together with enhancements, such as the new maintenance compounds, to allow for the maintenance and service standards expected of an efficient and modern railway.
- 2.4.5 The proposed acquisition of land from other parties is necessary and proportionate. They seek to balance the demands of a modern and efficient railway service pattern with the private interests of those having land taken from them.
- 2.4.6 The Applicant has sought to keep land acquisition to a proportionate and reasonable level. The applicant believes the powers sought represent the minimum reasonably required to allow the DCO Scheme to proceed and be implemented within a reasonable timeframe.

2.5 The Case for Temporary Possession Powers

- 2.5.1 The Applicant has included powers Temporary possession where it is not seen as necessary for an owner and/or occupier to be permanently deprived of their ability to have the beneficial use of their property, but where an ability to access the relevant land is essential for the DCO Scheme to proceed.
- 2.5.2 The purposes for which this Land will be used are stated in Schedule 12 of the Draft DCO. They are, to provide work compounds, working space, ecological mitigation and access. The specified uses are required as essential adjuncts to construction of the DCO Scheme.
- 2.5.3 In each case the Applicant carefully evaluated the need for use of the land, and in discussion with Network Rail decided if a temporary power was appropriate. The Applicant has chosen to seek temporary powers where the use is related to the construction of the DCO Scheme but the impact on the relevant plot would not mean that the land would not be changed in a way that the benefit of it for the existing owner is materially altered so as to deprive the owner of that benefit or materially alter it.

2.6 The Consideration of Alternatives

- 2.6.1 There is no practicable or viable alternative location for the DCO Scheme. It is efficiently reusing the disused railway, owned by the Applicant or Network Rail. As it is mainly using land held by the Applicant or Network Rail for railway purposes, acquisition of third party rights and interests in the locations proposed has been kept to a minimum - but cannot reasonably be avoided.
- 2.6.2 Where alternatives might possibly exist, the Applicant has again prioritised the used of its own land. Car Parks at Pill and Portishead stations are proposed on land the Applicant already owns. The Applicant has acquired the land for the forecourt at Pill station.
- 2.6.3 The car park to the north of Portishead station (Work no 6) (Works Plan REP1-003 Sheet 1) is on land held by other parties, but largely on the current alignment of Quays Avenue located on verge land that will cease to function as highway when Quays Avenue is realigned.

- 2.6.4 In regard to permanent and temporary compounds, because the route of the railway is already established identifying alternatives for land required for construction and maintenance is also limited in terms of scope.
- 2.6.5 All permanent compounds have a clear justification their location including the ability to access the compound from the highway for specialist vehicles and level access to the railway. The Applicant in each case is satisfied there is no better alternative.
- 2.6.6 Land assembly without the powers of compulsory acquisition is not a realistic alternative. The Land may not be assembled for the DCO Scheme within a reasonable timeframe or at all. The Applicant considers that its objectives and those of the relevant national policy statement and local planning policy would not be achieved.
- 2.6.7 Without powers of compulsory acquisition, the completion of the DCO Scheme would be uncertain and the need for the DCO Scheme could not be met.

2.7 The S122 Tests

- 2.7.1 Section 122 of the Planning Act 2008 (the Act) provides that an Order that includes compulsory acquisition powers may be granted only if the conditions in sections 122(2) and 122(3) of the Act are met. The conditions are:
- (a) that the land is required for the development to which the Order relates, or is required to facilitate or is incidental to the development (section 122(2)); and
 - (b) that there is a compelling case in the public interest for inclusion of powers of compulsory acquisition in the Order (section 122(3)).
- 2.7.2 The decision maker must be persuaded that the public benefits derived from the compulsory acquisition will outweigh the private loss suffered by those whose land is to be acquired.
- 2.7.3 In respect of the section 122(2) condition, and referring to the Guidance (at paragraph 23) the Applicant can demonstrate that the land shown on the land plans is needed for the DCO Scheme to proceed. The Applicant believes it is no more than is reasonably required for the purposes of the development.
- 2.7.4 In respect of section 122(3) condition, the Guidance makes it clear at paragraph 27 that the decision maker must be satisfied that there is a compelling case in the public interest for the land to be acquired compulsorily. The Applicant believes the public benefit for restoring Portishead and Pill to the passenger railway map outweighs the private losses that may occur. Compensation will be available in accordance with the Compensation Code for those proving they have sustained a loss to which the Code applies.
- 2.7.5 In accordance with paragraphs 20 and 22 of the Guidance the Applicant can demonstrate:
- (a) that all reasonable alternatives to compulsory acquisition (including modifications to the development) have been explored;
 - (b) that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose and is necessary and proportionate;
 - (c) the Applicant has a clear idea of how the land will be used;
 - (d) that there is a reasonable prospect of the requisite funds for compensation becoming available; and

- (e) that the purposes for which such powers are included are legitimate and sufficiently justify interfering with human rights of those with an interest in the land affected.

2.8 Reasonableness and Proportionality

- 2.8.1 The Applicant has taken a proportionate and measured approach to the land and rights identified as being required and will seek to reduce to a minimum any interference with owners' land and rights. Where powers are sought the applicant has considered the human rights of those affected and the impacts of the DCO Scheme on them.
- 2.8.2 The Applicant has met with all freehold landowners and is engaging in discussions with each. It is hopeful that private agreements can be reached with landowners but to enable the DCO Scheme to proceed in a reasonable and commercial timescale it is necessary, reasonable and proportionate for powers of compulsory acquisition to be provided.
- 2.8.3 Statutory intervention by way of compulsory acquisition of land and new rights, as well as temporary rights where appropriate, is necessary to ensure that this Nationally Significant Infrastructure Project can be provided in a reasonable timescale.
- 2.8.4 Finally, in respect of S123 PA 2008:
 - (a) In respect of S123 of the 2008 Act the Application included a request for Compulsory powers, with a land plan, book of reference and statement of reasons being provided. This satisfies S123(2) of the 2008 Act.
 - (b) No additional land subsequently has been the subject of a request for compulsory acquisition Subsections (3) and (4) are therefore not engaged.

ATTENDEES:

Ref:	Question/ Representation by:	Questions/Issues Raised at the CAH	Applicant's Response at the CAH	Applicant's Written Response
1.	<p>Anya Bigwood (RR-026) Affected Plots 06/295 and 06/300</p>	<p>Mrs Bigwood set out her concerns in relation to the Application and how her land is affected as follows:</p> <ul style="list-style-type: none"> • Concerned about the lack of information from the Applicant. • Needs further details on what land is going to be taken. • No idea of what the compensation for this will be • Not clear of whether this will be a permanent acquisition - the duration of occupation is vague and don't know how long it will go on for • Concerned about security and privacy - have a mature hedge at the bottom of the garden. Understand that works may mean that this needs removing but may be left with a chain link. • access for maintenance – house covers entire front of property and there is no access – not possible unless her garage is knocked down. 	<p>The Applicant stated that a lot of the concerns that have been expressed are matters that the Applicant has tried to deal with in standard documents that have been issued to affected parties.</p> <p>The Applicant understands that Mrs Bigwood came to the property in June 2019. The Applicant issued documents to Mrs Bigwood following her acquisition of the property but received no response.</p> <p>The Applicant stated that it would be sensible that the Applicant engages with Mrs Bigwood and deal with her concerns.</p> <p>The Applicant added that standard documents have been signed up to by a number of neighbours and the Applicant has also provided options to appoint solicitors that we have contacts with. The Applicant offered to find the information and re-send this to Mrs Bigwood.</p> <p>The Applicant then suggested that the Applicant (either James Willcock or Richard Matthews) and Ardent (Applicant's Land Referencer and Land Agent) meet with Mrs Bigwood, to explain in more detail what is proposed in the standard documents.</p> <p>In relation to compulsory acquisition the Applicant stated that it is seeking permanent new rights to insert soil nails in the properties</p>	<p>The Applicant refers to its representations given at the CAH.</p> <p>Since the CAH, the Applicant has:</p> <ul style="list-style-type: none"> • provided contact details to the Planning Inspectorate to be passed to Mrs Bigwood; and • called at Mrs Bigwood's property (whilst in the area to put up hearing notices for the Application) and providing the contact details to a person at Mrs Bigwood's property (Mrs Bigwood was not available at the time). <p>The Applicant has not yet received any contact from Mrs Bigwood but will continue to try to make contact.</p>

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			<p>running alongside the railway line, ensuring that the cutting works at the side at Pill Station are robust and that the works do not impact on the properties there. Temporary powers are sought to put up a railway secure fence – it will be robust. The Applicant suggested that this could be dealt with by a meeting, COVID - permitting. The Applicant agreed to respond in writing to Mrs Bigwood's concerns and address these through meetings.</p>	
2.	ExA Panel	<p>In relation to Work No 27: This relates to the provision of an alternative crossing by Ashton Vale Industrial Estate. There is uncertainty about whether this work will or will not be provided. The Applicant's response in a letter to Babcock on 21 August stated that the crossing would follow later if built.</p> <p>How does this meet the test set out in s122? If the ramp is built later could this not be done under Network Rail's permitted development rights?</p>	<p>In relation to the test in s122, the land required for the bridge itself is held by Network Rail. Prior to submission of the Application, there was a possibility that the Applicant needed new rights over land comprising the Babcock Estate. This was because the Applicant felt it could not meet the tests in s122 in relation to Babcock's land. The ramp improves accessibility for pedestrians and cyclists at times when the Ashton Vale Road level crossing is closed due to MetroWest services crossing Ashton Vale Road, but does not provide so significant an improvement that the need for it is sufficiently compelling to justify compulsory acquisition of new rights over Babcock's adjacent land.</p> <p>In terms of land in the Order lands on which this work would be located, it is existing operational land held by Network Rail. Network Rail's land is in the Order in any event and the Applicant has already adjusted the order land boundary to remove Babcock's land.</p> <p>As the work is to facilitate an improved highway network or permissive way it may be that Network Rail's operational permitted</p>	The Applicant has no further representations to add.

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			<p>development rights could not be relied on. The Applicant felt it was better to keep the work in the Order to ensure that it has the planning permission ready to construct the ramp.</p> <p>The Applicant did not feel it however there was a compelling case sufficient to seek powers to divert utilities serving Babcock in to Babcock's land. In the face of Babcock's likely objection to powers being sought over its land, it was felt appropriate to not seek those powers. There are planning justifications to keep the work in the Order as, if agreement is reached with Babcock, then the ramp would be provided. Bristol City Council is keen for the ramp to be provided for pedestrian access to Ashton Vale Road at times when the level crossing is closed due to the increased number of train movements arising from the MetroWest services. However the need for the ramp is not so compelling that it justifies seeking compulsory new rights over Babcock's land.</p>	
3.	ExA Panel	<p>In relation to Work No 29 (temporary construction compound at Freightliner site):</p> <p>The ExA stated that it wants a better understanding as to how the temporary construction compound relates to the Application. The DCO is for an NSIP and associated development works. However the Applicant is also proposing to carry out some of the works under permitted development</p>	<p>The Applicant stated that it would be better to deal with this in a written response. In relation to Works No 17/20 a compound is needed for the laydown area for points at Parson Street Junction – to the Bristol side of the green temporary land. The Applicant is content that it does not need a development consent order for those works, as they can be carried out under permitted development rights. However without that junction, the DCO scheme cannot function. The junction works are key to the overall DCO scheme. It is necessary and essential to have these works for the DCO scheme to be able to</p>	<p>The use of the existing Freightliner Limited Rail connected terminal at South Liberty Lane in Bristol is required for the construction of the re-laid Parson Street Junction as well as track and signalling works between Parson Street and Ashton Junction. Plot 17/05 will be the main welfare and small tools and materials area with Plot 17/20 used for the construction of the new track panels and junction. Plots 17/15 and 17/20 are sought for access to the compound areas.</p>

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		rights. In relation to Work no 29, the temporary construction compound would be used in relation to works carried out under the permitted development rights. It is not clear how this relates to the NSIP?	proceed. The Applicant thought that it was therefore appropriate to seek those powers.	
4.	ExA Panel	The ExA stated that it wanted a better understanding of why the Applicant is seeking compulsory acquisition powers in relation to a number of plots that are shown on the Land Plans.		
a)		<p>In relation to Plots 01/211 and 01/250 – the Lake area of open space adjacent to Galingale Way which is being sought on a temporary basis.</p> <p>The ExA asked the Applicant to justify the extent of the land required as looking at the Land Plans against the EMP it does not quite match up.</p>	<p>The Applicant stated that there were two reasons for the extent of the land being acquired:</p> <p>There are two paths on either side of the pond and it is anticipated that access is required over both parts. The Applicant explained that it will need to access the railway line immediately to the north for Work No 7, the new bridge and the path leading to bridge, as well as for access to the railway to install fencing. Access is also required to the mitigation land. The Applicant explained that it didn't think it was appropriate to choose one or other of the paths.</p> <p>The Applicant also stated that given the configuration of Galingale Way it would not like</p>	<p>The Applicant confirms its submissions at the CAH, save in regard to lighting columns (see last paragraph below).</p> <p>The two paths on either side of the pond are likely to be used for access to the construction works relating to the construction of the new pedestrian and cycle bridge (Work 7) and associated footpath. The paths may also be diverted in alignment on a temporary basis to tie in with the potential minor changes to the route for the crossing over the disused railway during works to construct Work no. 7.</p> <p>With regard to the pond itself, the Applicant's ecological contractors may release recovered amphibians to Galingale Way pond. Great Crested Newts (GCN) are</p>

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			<p>to rule out some degree of management of the routes that are taken by the public, dealing with informal permissive right across the railway. Access would be by foot only</p> <p>The new rights being sought (01/252, 01/255,01/260 and 01/270) is to access the freehold land (01/299) that runs south from the railway and which is to be used for ecological mitigation purposes. The new rights and freehold land will not itself give an alternative route for access or re-routing public access.</p> <p>The Applicant added that in that area, additional street lamps are to be provided and a small amount of plant is required in order to install the street lamps. In addition, the open space may be scheduled to come over to the Council in any case as part of a historic s106 agreement.</p>	<p>already present in this pond so it is reasonable to be able to access this pond to allow safe release of GCN and other amphibians found within 1 km of the pond (it can only be for release of amphibians found within 1 km of the pond to avoid the need for disease screening for chytrid fungus, which can affect amphibian populations).</p> <p>In relation to the street lamps, the Applicant would like to clarify these comments. Street lamps were due to be installed in this area under a previous works design. Following design review it was decided that the street lamps would not be installed.</p>
b)		<p>In relation to Plot 02/20, will this land be required if the Applicant uses the District Level Licensing (DLL) for Great Crested Newts (GCN)? It is shown as an enhancement area for that GCN.</p>	<p>The Applicant stated that it was not yet certain that DLL is going to happen. It would be premature for the Applicant to say that we do not require the plot.</p> <p>The Applicant added that temporary powers may be needed to allow for access to NR. There is a track there at plot 02/30 that might be used for this rather than the whole of 02/20. Some land is required for GCN relocation.</p> <p>Clare Williams, on behalf of the Applicant, added that this site is also needed as a reptile receptor site, not just for GCN. So even if the Applicant goes down DLL for GCN, this land is still needed as a site for the reptiles. All of the site is needed.</p>	<p>The Applicant can confirm that plot 02/20 is required as a reptile receptor site (Portishead Ecology Park Receptor Site) as detailed in Appendix 9.13 Reptile Mitigation Strategy [AS-040]. All of the plot is proposed to be used for this purpose. The plot will not be fenced off but access required across the whole of the plot for reptile relocation.</p>

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c)		<p>In relation to Works 10b (temporary right) and 11b (permanent right) these routes seem to lead nowhere.</p> <p>In addition, on the Land Plans the route bends north, whereas on the Works Plans, the route bends to the south.</p>	<p>The Applicant confirmed that these works relate to the interaction of the DCO Scheme and the National Grid Hinkley Point C Connection Order – the installation of the 132kW cable crosses the railway at this point.</p> <p>On the northern side of the railway, there are locations by which Western Power Distribution (WPD) can access their cable but this is not a permanent right. The Applicant intends that the two projects can be constructed together with both on site at the same time.</p> <p>On the southern side of the railway, National Grid's Order anticipates surface access for WPD's cable via the accommodation crossing at Shipway Gate Farm (02/125 on the Land Plan (AS-012). The accommodation crossing is proposed to be extinguished so new permanent rights are required to allow WPD access the cable south of the railway, to enable WPD to not exercise its power (or direct National Grid Electricity Transmission Plc to exercise its power) to secure new rights over the railway at plot 02/125) as the new rights will be replaced by the Applicant securing new rights over plot 02/121 (as well as the land or rights over plot 02/55.)</p> <p>The Applicant proposed to review the query in relation to the works and land plans and respond in writing.</p>	<p>The Applicant confirms its submissions at the CAH.</p> <p>The Applicant has reviewed the Works and Land Plans in more detail and an updated Works Plan showing the correct alignment for Work 11B has been submitted to the ExA at Deadline 3 – see DCO Document Reference 2.3 Version 4.</p> <p>The Applicant can confirm that the Works Plan is incorrect but the Land Plan is correct. A new Works Plan has therefore been provided to the Examination. The Applicant can confirm that no additional land needs to be included in the Land Plan and Book of Reference.</p>
d)		<p>Work Plan – Sheet 2a. There is what appears to be an additional plot of land shown on the Works Plans that is not</p>	<p>The Applicant agreed to take away this action and review the anomaly.</p>	<p>The land shown in the top right corner of Sheet 2A of the Works Plans is included on the Land Plans – the full extent of this can be found on Land Plan Sheet 1, shown by plot 01/299. Please see attached side-by-side</p>

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		shown on the Land Plans. Please can you clarify this anomaly?		<p>'Works Plan vs Land Plan comparison (sheet 2A)' showing the difference in orientation of Works Plan vs Land Plan. (Appended to this document at Appendix 1)</p> <p>The Works Plan northern-most cut lines on Sheet 2A are located further north than the Land Plan.</p>
e)		Land required for Work No 12b. Could the Applicant confirm whether permanent acquisition of this land is required or if a right of access would be sufficient?	The Applicant will respond in writing.	<p>The Applicant can confirm that in relation to the this land heads of terms for freehold acquisition (of plot 03/30 and 03/32, with new rights over 03/31) were signed on 15 December 2020.</p> <p>The Applicant continues to seek the power of freehold acquisition over the land required for Work No 12B (Plots 03/30 and 03/32). This land is sought to offset the permanent loss of habitat along the disused railway line provide land for biodiversity gain and maintain the ecosystems and networks. It's inclusion within the Order land remains justified. under the National Policy Statement for National Networks (NNNPS). Paragraph 5.33 states:</p> <p><i>"Biodiversity within and around developments</i></p> <p><i>5.33 Development proposals potentially provide many opportunities for building in beneficial biodiversity or geological features as part of good design. When considering proposals, the Secretary of State should consider whether the applicant has maximised such opportunities in and around developments. The Secretary of State may use requirements or planning obligations where appropriate."</i></p>

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				<p>The Applicant intends to use the land for ecological works including replacement vegetation planting (to replace vegetation lost along the route of Work No. 1) and for ecological works.</p> <p>This area of land has been included in the ES Chapter 9 [AS-031, paragraph 9.7.18 and 9.7.19 and Table 9.30] related to biodiversity gain. As much habitat on the route between Portishead and Pill will be retained as possible. The Railway Landscape Plans (Disused Line) [APP-017] show the vegetation to be retained or replanted. A comparison of all vegetation losses and gains has been made to assess impacts in Table 9.30. The habitat gain from GCN off site compensation at Sheepway (land plot 03/30) has also been included in Table 9.30. This site will be enhanced from semi-improved grassland into rough grassland, scrub and ponds. If DLL licensing for GCN is possible then this area will still be enhanced for biodiversity gain (AS-031, paragraph 9.7.18). The permanent vegetation losses on the disused line for construction between Portishead and Pill is 5.84 ha. To balance this, a total of 5.94 ha will be replanted or enhanced.</p> <p>Even if a pond is not required there are compelling justifications for the acquisition of the plots to allow the Applicant to provide hibernacula (see sheet 4 of the Environmental Masterplan Doc 2-53[APP-045]). In addition, acquisition of plot 03/30 will allow the Applicant to meet the stated position of Natural England, in its consultation response, summarised in the Environmental Statement (AS-031, Page 9-22, table 9.3:</p> <p><i>"NE advised that the HRA provides clarification on areas of vegetation subject to clearance 'in the future'</i></p>

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				<p><i>(as referred on the Railway Landscape Plans disused line). It would be helpful to quantify losses and gains. NE encouraged additional planting (potentially outside of the railway corridor)."</i></p> <p>New rights are sought over Plot 03/31 for access to maintain a culvert under the railway.</p> <p>The Applicant believes there remain compelling environmental and ecological justifications for the acquisition of the relevant plots. It is however also submitted, for clarification purposes, that it is not necessary for a requirement to be imposed to achieve this purpose.</p>
f)		<p>Plot 05/103 which is required in relation to works under the Avonmouth Bridge includes the acquisition of permanent rights but only for temporary construction. Please can you explain why this is needed?</p>	<p>The Applicant advised that this is required to allow room for Network Rail vehicles to turn so that they can return to Marsh Lane cab first. No physical works are proposed.</p>	<p>The Applicant has nothing further to add to the representations given at the CAH.</p>

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5.	ExA Panel	<p>The Compulsory Acquisition Schedule submitted at Deadline 2 is difficult to search (ie. it gives no addresses or landowner names) and it is difficult to see from the document at a glance, what the current position is with the affected parties.</p> <p>The ExA gave the Esso Southampton to London Pipeline Project DCO as an example of good practice.</p> <p>Mr Crossman is noted in the Book of Reference [REP1-007] as having an interest in plots 02/50, 02/53, 02/90 and 02/101 but these plots are not listed in the CAS – Applicant to check and amend as necessary.</p>	<p>The Applicant noted the ExA's comments and agreed to review and revise the CA Schedule.</p>	<p>A revised CA Schedule has been submitted at Deadline 3 – please see DCO Document Reference 9.11 ExA.CA.D3.V2.</p> <p>Mr Crossman was included as a presumed Freehold owner of the subsoil of plots 02/50, 02/53, and 02/101. The plots mentioned are unregistered highway land and therefore the subsoil of this highway is technically unregistered. Furthermore, the Ad Medium Filum presumption applies (which is a rebuttable presumption that owners of the frontages to highways are presumed to also hold the half-width of the highway subsoil fronting the owners freehold interest, subject to the highway itself existing over that land). In the Book of Reference freehold owners adjacent to unregistered highway land are included as freehold interests in respect of subsoil interests to the half width of the highway. As this ownership is a presumed and not yet proved to or accepted by the Applicant, the extended interest has not been scheduled in the Compulsory Acquisition Schedule.</p> <p>Plot 02/90 is unregistered land. Mr Crossman has been included as an occupier in respect of access as this plot is directly adjacent to the field entrance to the adjacent land. As the land is unregistered, Mr Crossman's interest as an occupier has not been scheduled in the Compulsory Acquisition Schedule. It is not clear if he has an interest amounting to ownership that could be conveyed to the Applicant. It is however believed that Mr Crossman does use the relevant land for access purposes.</p>
6.	Freightliner	<p>Representatives attending the CAH on behalf of Freightliner set out their representations and concerns as below:</p>	<p>The Applicant agreed that negotiations were ongoing with Freightliner.</p> <p>The Applicant added that there was no intention on the part of the Applicant or Network Rail to</p>	<p>Further discussions have taken place between Network Rail and Freightliner Limited over the past 2 weeks concerning a road vehicle route from the public highway to plot 17/20 and whilst the negotiation is not yet</p>

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		<ul style="list-style-type: none"> • The parties have been talking now for over a year. The parties agreed the boundary of Plots 17/20 and 17/05, and have agreed commercial terms of the occupation of those plots. This week, NSC and NR confirmed option period for those plots. The options are negotiating an option fee for the plots. Plot 17/10 is public highway. • Plot 17/15 is the principal concern. This appears to have been drawn with no regard for physical layout of site. This area is to be used for stabling and Freightliner is in advanced discussions with an aggregates user to let this area. This relates to the site along the frontage. The current routing of the plot would mean that any unloading operations would be impossible, Freightliner need to retain some flexibility in the routing/location of the access. At the eastern end of Plot 17/15 this land is used for car parking as well. • Freightliner is concerned with the inclusion of the eastern end of plot 17/15 – 	<p>go slow on resolving this and it is a key temporary access area to resolve for the Applicant. Negotiations are proceeding and not far off.</p> <p>In relation to Plot 17/15, Richard Guyatt stated that he would need instructions and would respond in writing. The Applicant does need to be able to access Plot 17/20 as this is the principle lay-down area. Not aware that it has to be that specific route but needed to put in a route for the purposes of the Application.</p> <p>It is in the interests of parties to negotiate this as much as possible. Don't know if this will involve any changes to the Order. Likely that any change will be dealt with in a protective agreement between Freightliner and the Applicant rather than changing the draft Order.</p>	<p>concluded the principle of a 3-4m wide flexible strip of land across the site, that might move from time to time is broadly acceptable to both parties. It is hoped that this can be concluded in January 2021. This will allow Freightliner Limited to develop the site for its customers and tenants as well as allowing Network Rail to access plot 17/20 during the period 2022-2025.</p> <p>The Applicant does not propose to alter the Order land so as to relocate or remove plot 17/15. If agreement is reached between Freightliner and Network Rail then the Applicant will undertake to not exercise powers over plot 17/15 if a suitable alternative route is available to Network Rail and the Applicant when powers are sought to use plot 17/20 for the purposes of the installation of the new Parson Street Junction.</p>

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		<p>this route to access the construction compound doesn't reflect what is on the ground – that land is not required to access the other plots in this area.</p>		
7.	<p>Mrs Susan Freestone (on behalf of herself and Mr Stephen Bullock)</p>	<p>Mrs Freestone said that she was aware of a change request from the Applicant. The change request relates to Work 16D which is flood mitigation work. This is now to be taken out of the Application (if the change request is approved).</p> <p>Mrs Freestone advised that after the OFH she contacted Richard Guyatt and James Willcock. Satisfied that progress has been made in the designation of the land and intended use. Mrs Freestone has seen some progress by the project on assessing the viability of other sites and direction of travel on reducing the extent of the land needed east of the M5. Mrs Freestone advised that the Portbury Reserve and Watch House Hill alternative sites were rejected, for reasons Mrs Freestone doesn't agree with.</p> <p>Mrs Freestone has been in negotiation with others for disposal: in particular in relation</p>	<p>The Applicant stated that, in relation to the change request, the intention, should the change be permitted, is to offer no evidence in relation to the freehold acquisition of the western-most side of Plot 05/85. The Applicant would still wish to extend a new right we are seeking over the neighbouring land that runs parallel to the railway to the Easton-in-Gordano stream, giving access to cattle creep bridge at plot 05/86. The Applicant wishes to keep the kite shaped land in the Order as this is intended to provided mitigation for GCN and other ecological purposes would make that land useful. Plot 05/85 would reduce size of the kite-shaped land – the rest of the land would be removed from the Order.</p> <p>In relation to the land negotiations, the Applicant stated that Mrs Freestone is thanked for providing comments and no comment is going to be made on the negotiations.</p> <p>The Applicant added that the kite-shaped land is still required for ponds for Work No 16C – this is for GCN relocation – designated in the local plan for ecological purposes. An area we can make use of to assist in ecological mitigation.</p>	<p>The Applicant has continued to engage with Mrs Freestone post the CAH and is currently awaiting further feedback from Mrs Freestone in relation to the land east of the M5.</p>

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		to land East of the M5 Barratt Homes in relation to an option and the Port on the west. The Project and compulsory acquisition of the land is likely to have a financial impact on the family. Negotiations are, however, progressing.		
8.	Mr John Crossman (on behalf of himself and his father Mr Colin Crossman)	<p>Mr Crossman set out his concerns in relation to the Application as follows:</p> <ul style="list-style-type: none"> • severance, • loss of rights over level crossings, • bridge option, • preference to use existing bridge, • concern of improper use of DCO for HPC connection, • access road impact on future prospects of the land. <p>Mr Crossman provided background to the workings of his family's farm and current position with the Applicant.</p> <p>The Farm was inspected in September by the Applicant's agent and are arranging another meeting. Mr Crossman still has big concerns over the</p>	<p>The Applicant thanked Mr Crossman for his summary and confirmed that the Applicant is hopeful that the negotiations will continue. The Applicant had two principal points:</p> <ol style="list-style-type: none"> 1) Why accommodation crossings are to be closed. This is to do with railway safety. ORR policy to have no new level crossings, these would be treated as new as far as ORR except in exceptional circumstances – will set out the policy. 2) New rights in relation to WPD – the MetroWest Order would remove their existing rights of access and need to ensure that these remain. <p>The proposed new right for the 132kw cable in the NGET Order would provide for new rights for a cable under the railway and surface access over plot 02/121 for WPD to maintain its cable. Plot 02/55 and 02/121 of the MetroWest DCO in combination are required to prevent WPD having an asset that they cannot access.</p> <p>The Applicant does not believe WPD have any alternative method of securing the revised access to its cable. There is therefore a</p>	<p>The Applicant does not believe WPD has any general power of access across land. The powers in the Electricity Act 1989 are limited and it is standard for orders providing for new works such as WPD's newly installed cable to have specific rights of access included. The Applicant needs to secure the rights it seeks in its application (freehold or new rights over plot 02/55 and new rights over plot 02/121) to allow WPD to not seek permanent new rights over the accommodation crossing which the Applicant is seeking to close (02/125).</p> <p>The Applicant believes there is a compelling case for the closure of the accommodation crossings on railway safety grounds. The Applicant refers to The Office of Rail and Road document, "New level crossings How ORR applies its policy of no new crossings unless there are exceptional circumstances" dated August 2018, attached at Appendix 2 to this document.</p> <p>At paragraph 6 of the document ORR states</p> <p><i>"ORR's policy is that new level crossings should only be considered appropriate in exceptional circumstances".</i></p> <p>Paragraph 8 notes:</p>

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		<p>severance and the level crossings. Mr Crossman confirmed that his family don't want a bridge. In discussions in relation to the accommodation works. They will split the farm in half but if can't come to an arrangement on these then might need to consider a bridge. 95acres on south, 30 acres on the north- all buildings on the north of the railway. Only way to access this is via the road.</p> <p>Currently farm sheep, have been arable and go back, use to be a beef farmer, but could go back. Also have horses that use the crossing. Tractors go across regularly. Lambing season, lamb in the sheds on the north, and then move out to the south. Level crossing used quite regularly.</p> <p>Mr Crossman added that he is not happy about a new right of way for a 3rd party across his land. Currently when any of the utilities need to come onto Crossman land, they have existing powers. Understanding is that the track is to be used for maintenance for pylons for Hinkley Pont C Connection Order. Why can't they use</p>	<p>compelling case for the plots and rights to be included in the MetroWest Order so as to allow for the closure of the accommodation crossing at 02/121.</p>	<p><i>"Network Rail also has a general "no new crossings" policy "</i></p> <p>Paragraph 10 states that a new level crossing includes:</p> <p><i>"the reinstatement of a crossing that is in place but has not been in active use for a period of time"</i></p> <p>Paragraph 22 explains that</p> <p><i>"There would only be exceptional circumstances where there is no reasonably practicable alternative to a crossing on the level at the location in question."</i></p> <p>The Applicant does not propose a replacement accommodation bridge to replace the accommodation level crossings proposed to be closed by the powers sought in the Order. The Applicant believes that the nearby bridge carrying the highway of Sheepway over the railway, together with the proposed works to Mr Crossman's access on the south side of the railway (plot 02/55) will provide sufficient and a reasonably practicable alternative access to replace the accommodation level crossings.</p> <p>The Applicant also believes the impact of an accommodation bridge on Shipway Gate Farm would outweigh benefits that may be gained by such a bridge given the size of the footprint of such a structure. The Applicant acknowledges that in addition the impact of the scheme will give rise to a claim for compensation by Mr Crossman. The Applicant remains willing to progress discussions regarding compensation and appropriate additional accommodation works, such as</p>

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		existing powers, does it need to be a formal track?		<p>providing additional shelters for livestock, that may be appropriate.</p> <p>In relation to Mr Crossman's concerns regarding the access to be provided to WPD over plots 02/55 and 02/121, the Applicant (together with WPD) would be willing to negotiate a access agreement from the highway of Sheepway, to WPD's cable easement, which included "lift and shift" provisions or an alternative route that is reasonably acceptable to WPD that is less direct. This can be secured by agreement between the parties and the applicant will write to Mr Crossman to propose such negotiations.</p> <p>Mr Crossman indicated his concerns that the current route of the proposed new right would impact on the value of his land. Whilst this can be mitigated by Mr Crossman by entering into negotiations and agreement as suggested above, Mr Crossman's concerns are a matter for compensation.</p>
9.	ExA Panel	In relation to Plot 16/130 – Babcock are listed as Category 3 persons. There are impacts on ingress and egress to the relevant plots.	<p>The Applicant advised that the current position is that we have to include Babcock's interest in the Book of Reference for various parts of the highway, applying the ad medium filum presumption (see Ref. 5 above).</p> <p>The Applicant does not think that any new rights are required in the land.</p> <p>Babcock are also listed as Category 1 in plots further up Ashton Road. Babcock were included because of the presumption in relation to sub-soil but works would be dealt with under an agreement between the Applicant and Bristol City Council. No compulsory acquisition is expected.</p>	The Applicant has nothing further to add to the representations given at the CAH.

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10.		<p>Manheim Car Auctions have provided a relevant representation. They are concerned about access into their site.</p>	<p>The Applicant stated that there is a proposed second access into Aston Vale Road, which the Applicant and Network Rail are keen to see happen. The access would be located further to the west and outside of the Order limits.</p>	<p>The Applicant notes this issue has now been listed for consideration in January. The Applicant also notes the level crossing is already in existence and its use by Network Rail can be increased without a need for further consents. The principal control over movements out of Ashton Vale Road is the traffic signal controls and not the Level crossing.</p> <p>The Applicant will provide more detailed submissions at Deadline 4, following the ISH in January.</p>
11.		<p>Representation was made by London Pension Fund in relation to Plot 16/35, and Plot 16/155 – RR-018.</p> <p>The LPF noted that they were concerned that the Application might encroach onto the land they own. Has this been resolved?</p>	<p>The Applicant advised that it would look into this and respond.</p>	<p>The Applicant believes that the landowner's reference to and interest in plot 16/35 may be an error due to the location of plot 16/35 being part of the highway of Ashton Vale Road. Plot 16/135 is adjacent to the landowner's registered tile and so the Applicant has made reference to plot 16/135 within the clarification below.</p> <p>Regarding plot 16/155, the Applicant has attached at Appendix 3 to this document 'London Pension Fund – Title Plan vs Land Plan extract'. Title number BL153134 is registered and owned by Bristol City Council. Title BL56479 is the title in which London Pension Fund Authority hold an interest. The extent of plots 16/155 and 16/35 have been drawn around the edges of registered title boundaries for BL153134 and BL56479, to exclude the land in which London Pension Fund Authority hold an interest from land required for compulsory acquisition. The Applicant believes that the Order Limits do not encroach on title BL56479.</p>

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12.		Ms Eleanor Blaney submitted a relevant representation – RR-040. The RR raised concerns about a lack of information plots in relation to the 06/646, 06/647	The Applicant has no further update at the moment. The Applicant is hoping that a voluntary agreement will be entered into between the parties.	<p>The Applicant has nothing further to add to the representations given at the CAH. A full response to RR-040 is provided in the Applicant's submissions at Deadline 1 [REP1-029].</p> <p>The Applicant met with Ms Blaney (and other affected landowners) on 3rd November. The Applicant took away actions, including to undertake surveys on the land.</p>
13.		<p>Mrs Fear submitted a relevant representation (RR-089) which relates to Plots 04/20, 04/ 21, 04/35 and 04/36.</p> <p>Mrs Fear has raised concerns about severance from their field and alternative access.</p>	The Applicant understands that the land in question is now in probate. Mrs Fear has advised the Applicant that she does not want to negotiate on the proposed option. The Applicant confirmed that the team have tried contacting Mrs Fear, but has so far been unable to make any contact. The Applicant will continue to try to contact Mrs Fear.	The Applicant's Agent has now had further correspondence with the Applicant's Agent. The Landowner's Agent has now requested the draft Heads of Terms to be recirculated for the Landowner's consideration.
14.		Mr Charles Money and Ms O'Hara	<p>The Applicant and Mr Money, Ms O'Hara and Ms Blaney had a site meeting on 3rd November. The Applicant took away actions and will be undertaking surveys on the land.</p> <p>The Applicant is to arrange access for these surveys to take place with the relevant landowners. Issues licence to the agent, once entered into, need to undertake the surveys, then will negotiate the HoTs.</p>	The Applicant has nothing further to add to the representations given at the CAH.

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15.	ExA Panel	<p>In relation to Category 3 persons and to the written questions from the ExA ExQ1: CA1.14 – responses on the questions received. Questions on specific plots:</p> <p>Manheim Car Auctions have set out a detailed objection and one of their concerns relates to access. The ExA queried why Manheim Car Auctions are a Category 3 person as their concerns relate to access. Flynn Limited/ETM Contractors are part of the joint objection. Why are Manheim Car Auctions and Flynn Limited Category 3 persons, but ETM Contractors is not?</p> <p>ExA understands that Plot 16/130 is the relevant plot. This only seems to be part of the level crossing. Why is it this specific plot?</p>	<p>The Applicant is to take this point away and consider. The Applicant is keen to make sure that Manheim Auctions are included in the Book of Reference in relation to their concerns around the Ashton Vale access.</p> <p>In relation to Plot 16/130, the Applicant is to take this question away and consider the response.</p>	<p>E T M Property Limited have been included as a Category 3 interest and served with necessary statutory notices. On 29th August 2019, E T M Property Limited were sent a confirmation schedule for the interest to complete to confirm addressee details. This form was returned on 3rd September 2019 by E T M Property Limited, confirming E T M Property Limited of 81 Hartcliffe Way, Bristol, BS3 5RN as the correct party. If the interested party can provide an additional company name or updated details for the interest, the Applicant is happy to update the Book of Reference with alternative details if preferable.</p>
16.	ExA Panel	<p>The Applicant was asked to confirm that all affected parties are captured in the Book of Reference. This question was raised as a result of the Rule 6 letter and that that not all parties had been included in the originally submitted Book of Reference.</p>	<p>The Applicant is confident that all checks have been carried out and that everyone that we should have included in the Book of Reference has been included. The Applicant told the ExA that Ardent carry out regular checks at the Land Registry and are confident that we'll spot any changes as and when they arise.</p>	<p>The Applicant has nothing further to add to the representations given at the CAH.</p>

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17.	WPD	<p>Representatives of WPD set out their concerns in relation to the Application as follows:</p> <ul style="list-style-type: none"> • Potential loss of rights under the Hinckley connection DCO and the crossover between the two orders. • The diversion of the 132 kv cable is happening at the moment and duct installed under the railway land. Very soon the cables will have been pulled through. Not yet energised – don't know when and the existing 132 kv overhead route will be removed. We are expecting that the next year the cables will be energised. Will still be using the south of Sheepway compound until October 2022. • In relation to the Protective Provisions there are two main issues for WPD: <ul style="list-style-type: none"> ○ Applicant seeking to limit their losses to £550k/event – puts risk on WPD ○ Insertion of a new paragraph 83 in 	<p>The Applicant thinks it is better that we deal with the comments from WPD in a detailed response and come back to WPD.</p> <p>The Applicant is happy to enter into the SoCG with WPD. The Applicant is looking at the Protective Provisions and the protective agreement. Problem is interlacing this with Hinckley Connection Order and National Grid.</p> <p>The conversations may need to include WPD, National Grid, the Applicant and Network Rail.</p> <p>The Applicant will progress the Protective Provisions and protective agreement as rapidly as possible.</p> <p>The Applicant and WPD will explain the reason why a specific access is needed under the DCO over Mr Crossman's land and why there is not a general right for WPD to do this.</p> <p>The Applicant agreed that the right needed to be provided for in the Order.</p>	<p>Since the CAH, the Applicant and WPD have met to discuss the outstanding issues between the parties. The Applicant and WPD have agreed to meet again in January.</p> <p>The Parties have agreed to provide a Statement of Common Ground to the Examination. The Applicant proposes to deal with the agreed points, and matters outstanding, in the SoCG.</p> <p>The Applicant believes that the SoCG should be available by Deadline 5 and will endeavour to make substantial progress to allow earlier submission. The Applicant will provide its submissions on any outstanding issues between the parties at that time.</p>

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		<p>Protective Provisions - concern is that this is too wide and does not give certainty.</p> <ul style="list-style-type: none"> • An Asset protection agreement is proposed to be entered into as a side agreement • In relation to the limitation of liability, WPD brought to the attention to ExA the Network Rail East West Rail Improvement Order (TWAO) 2020. WPD is an interested party in this. This Order included Protective Provisions and at no point did Network Rail seek to limit the losses to a specified amount. WPD brings this to ExA attention as this is a specific point. At no point has a limit on losses been proposed as has been proposed in the way seen here. • WPD want to confirm that the point and the purpose of the Protective Provisions is to give certainty that those assets being diverted and those being protected, 		

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		<p>have certainty that those provisions apply. New provision at paragraph 83 is to take away that certainty.</p> <ul style="list-style-type: none"> • Compound at Sheepway – this is a very complex area and there are lots of rights in place here. There needs to be some certainty around this. Would encourage a SoCG on some of the points to make this clear. WPD have seen the National Grid SoCG and have had discussions with the Applicant to ensure that their SoCG covers these points, and how all the rights around Sheepway work together. ExA agreed that a SoCG would be appreciated. • Asset protection agreement. WPD usually always has a an asset protection agreement where DCO schemes interact with their apparatus. These give WPD protection. Applicant has agreed it is acceptable but not yet finalised. Encourage finalising this. 		

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18.	National Trust	<p>The ExA asked for an update on discussions between the parties.</p> <p>National Trust (NT) looking for a reduction in the size of the compound in relation to the flora and fauna. NT want this to be kept to a minimum in size so there is no compound creep. NT is not asking for reduction in compound size.</p> <p>NT explained that the following are issues for NT: Rock fencing, rock stabilising, catch fences, and Quarry Bridge No 2.</p> <p>NT stated that it believes that that Special Parliamentary Procedure (SPP) would apply for temporary acquisition though this hasn't been tested.</p> <p>NT added that it was generally supportive of the scheme.</p> <p>NT stated that it proposed a lease for a term of 99 years and an option to renew the lease in relation to the rock face and catch fencing. Conversations that we've been having, include the Applicant paying for catch fencing and managing risk, then onwards NT are responsible.</p>	<p>The Applicant stated that from the legal side, there is a lot there that should be responded to in writing. In relation to discussions that have taken place to-date, the Applicant confirmed that there wasn't anything else to add. The Applicant confirmed that dialogue with NT is ongoing. The parties are progressing HoTs on the issues and we intend to issue those next week. Good direction of travel.</p> <p>Network Rail added that discussions are ongoing – in terms of rock face, the management is undertaken by NT, Network Rail undertake management in the Avon Gorge.</p> <p>The Applicant confirmed that it has views about the application of s130 in relation to SPP. but it will leave matters with NT to a later date. Rather the points are dealt with between the parties. Better use of examination time to make the issue redundant rather than deal with it.</p>	<p>There has been further positive engagement between the NT, NSC and NR. Work is ongoing between the parties to address the key issues that the NT have presented in their response. The most recent calls between the parties took place on 3 and 16 December.</p> <p>In response the NT's concern about damage to the flora and fauna from the construction compound, NR and NSC have suggested a simpler design solution which could be implemented for Quarry Underbridge No.2. This would provide a concrete infill and culvert rather than a new bridge deck. While this would reduce the NT's ability to access land on the other side of the bridge with a large vehicle (i.e.. pickup truck), it would be a simpler, more efficient solution that would abate the use of the compound and reduce potential for 'compound creep'.</p> <p>Discussions have also sought to address the NT's concern of additional expense being passed on to NT as a result of the DCO Scheme . As the NT land runs adjacent to the operational freight line, the liability concerned already exists, although the consequences of a rock fall from NT's land onto the railway are potentially greater with a passenger train service. The Applicant has therefore agreed to provide catch fences and rock bolts that will reduce the risk of falling debris reaching the railway below. Discussions are continuing how Applicant may be able to assist NT with meeting future repair and maintenance costs for the catch fences.</p>

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		<p>Have had further conversations on this yesterday.</p> <p>NT's view is that great expense is being passed onto the NT as a result of the Scheme. There are rock falls, as well as recent rock falls at Stonehaven, which led to loss of life concerns for NT. This is only a temporary acquisition of land so NT would ultimately be responsible. The costs of looking after the rock faces is likely to be in the tens of thousands for NT but final works have not yet designed. NSC will try to place the catch fencing on Network Rail land, but that in reality these would be placed on NT land. NT does not believe it should be in a worse position because of the DCO Scheme.</p> <p>NT confirmed that there are fences in place now in relation to the freight line. NT is not aware of what the current management arrangements are on there at the moment. This work is currently carried out by the NT.</p> <p>In relation to risk of rock falls, insurers have told NT that their insurance does not cover the current levels.</p>		

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19.	ExA Panel	Crown Land - As far as the ExA aware, there are two areas of land acquisition, namely Plots 05/90, 05/115 owned by the DfT. DEFRA owns 16 plots in Leigh Woods. All other Crown Land plots relate to rights of access that are sought by the Applicant.	<p>The Applicant provided an update on securing Crown consent:</p> <p>The Applicant is liaising with the Government Legal Department (GLD) which is instructed by the Department for Transport and the Department for Health and Social Care in respect of their relevant land interests. Draft responses in respect of both are expected from GLD imminently.</p> <p>The Ministry of Defence are dealing with the matter through their in-house lawyer, with whom the Applicant and GLD are in discussions. The Applicant awaits comments on behalf of the MoD.]</p> <p>In relation to DEFRA (land held on behalf of the Forestry Commission) the focus is on discussions with the Forestry Commission and practical matters. GLD have made contact with the Forestry Commission and await formal instruction in respect of the Crown consents, but this is expected.</p> <p>The Applicant agreed to provide a note on the differences between Forestry Commission and Forestry England.</p>	Please see the note on the differences between the Forestry Commission and Forestry England included at Appendix 4 to this document.
20.	ExA Panel	Plot 06/240 – Is Crown Consent required in relation to this land?	Yes. NSC acquired this plot previously as it is required for a station carpark. Still a Crown interest in that it was acquired subject to a restrictive covenant. Because of the covenant we think we do need confirmation from Burges Salmon (acting for the Crown) to say that the Crown is content. We are onto it and have	The Applicant has been provided with confirmation from Burges Salmon that on the basis that plot 06/240 was acquired subject to a restrictive covenant, The Crown Estate has no issue with the land being included within the land to which the DCO Scheme will apply. A copy of the confirmation is included at Appendix 5 to this document.

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			identified this as an action, which is being progressed.	
21.	ExA Panel	Temporary possession ExA noting an increasing concern that DCO apps using temp powers rather than using CA powers. Confirm that the powers being sought on this are correct.	Yes we are satisfied. We did spend a lot of time looking at this and in the land plan preparation. Chose to use temp powers where use is construction but clearly time limited and the impact is not such that on a perm basis it would deprive the owner of the benefit to that land. Used only where needs are temporary and not physically taking the land.	The Applicant has nothing further to add to the representations given at the CAH at this stage.
22.	ExA Panel	Statutory Undertakers ExA gave general comments on this. At deadline 2, found another two statutory undertakers. Is the Applicant now confident it has engaged with all undertakers?	The Applicant will respond in writing to this point.	ESP Utilities Group Limited and Gigaclear Limited were identified as potential new interests and added to relevant plots in the Book of Reference. Letters have also been issued to both pursuant to s102 of the Planning Act 2008.
23.	ExA Panel	Protective Provisions One-size fits all approach does not work. Pressure needs to be maintained with the Statutory undertakers to progress these.	Negotiations are ongoing.	The Applicant has nothing further to add to the representations given at the CAH.
24.	ExA Panel	Environment Agency (EA) ExA asked for an update in relation to the voluntary negotiations.	The Applicant is in discussions with the Agency. The PPs may come out but not much more can be added. No major issues are expected and it is hoped the parties should be in an agreed position in the next month or so on the PPs and an update will be provided at January's Hearings.	The Applicant has nothing further to add to the representations given at the CAH.

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25.	ExA Panel	<p>Bristol Port Company</p> <p>Port considered that an ISH on the Port should occur - matters only considered at hearings if the ExA need further information. It is not for evidence or cross-examination. Inappropriate to wait until later to consider the issues. Having reviewed the comments submitted, won't be holding a separate ISH on the Port. Little weight on any possible overlap of discussions.</p> <p>Action: Port to make a legal submission of the statutory source and authority for the powers they are relying on. How undertakings are transferred. Some stat undertaker sight behave been transferred others, may have been reserved. How development affect stat and commercial functions. Info needed as soon as possible.</p>	<p>The Applicant noted that it had held discussions with the Port in relation to Work No 16D and the flood compensation works. The Applicant has received HoTs and these are with WBD to comment on. Have been discussions between Network Rail and the Port. Remains the objective to ensure that an agreement is reached.</p> <p>Port submitted suggested PPs – the Applicant did not comment on them at the CAH but comments can be produced for deadline 3.</p>	<p>The Applicant has held a number of further discussions with Bristol Port Company and hopes to make progress on matters, including Protective Provisions, in January.</p> <p>Given the progress being made the Applicant suggests that it provides comments on the proposals for protective provisions at Deadline 4.</p>
26.	ExA Panel	<p>Natural England have raised concerns about a couple of the planting locations and have suggested other locations. Does this have any compulsory acquisition implications?</p>	<p>The Applicant stated that it will be addressing this issue in January. Consider whether it makes any difference to order limits.</p> <p>The land in question is either Network Rail land or is land that would be secured by agreement, rather than compulsion.</p>	<p>The whitebeam planting sites proposed as part of the original DCO submission (Whitebeam Planting Package 1) and the woodland compensation sites originally proposed are all on land held by Network Rail and within the Order lands and therefore are fully deliverable as part of the DCO Scheme.</p> <p>NSC is proposing an alternative whitebeam planting site as part of Whitebeam Planting Package 2 and an</p>

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				<p>alternative site for woodland compensation on Forestry Commission land is because Natural England has concerns about two of the planting sites in Package 1 and the use of Network Rail land for woodland compensation.</p> <p>Natural England has concerns about the suitability of two of the planting sites in Package 1 owing to the potential for an impact on SSSI features at these planting sites as a result of clearing vegetation to plant whitebeams. In respect of compensation in the form of positive woodland management, Natural England is of the view that it would be easier to demonstrate that positive woodland management provided on land outside the SAC discharges the legal requirements of the Habitats Directive than positive management measures proposed on land within the SAC, including Network Rail land. This is because compensatory measures within the SAC would need to be over and above the obligations to undertake conservation measures that Network Rail, as a public authority, has under the Conservation of Habitats and Species Regulations 2017 (see Report to Inform Habitats Regulations Assessment Version 2 (DCO Document Reference 5.5) [AS-027] at paragraphs 1.3.1 – 1.3.4). These obligations will continue to have effect after 31 December 2020 as the Conservation of Habitats and Species Regulations 2017 have been amended by the Conservation of Habitats and Species (Amendment)(EU Exit) Regulations 2019 to ensure that habitat and species protection and standards will continue to apply). The additional planting site in Package 2 (the red oak plantation site) and the alternative woodland compensation site on Forestry Commission land have therefore been proposed by the Applicant in response to Natural England's concerns. The Applicant cannot secure compulsory powers over the Package 2 land under the Order - because it is land held by the Crown –</p>

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				<p>so there is, in land acquisition terms, little purpose in including powers to acquire the Package 2 Land compulsorily. Even if this were not the case, the Applicant believes the Package 1 land and the compensation measures proposed on Network Rail land are sufficient to discharge the legal requirements and so it is difficult for the Applicant to mount a compelling case in the public interest for land when it itself believes a suitable alternative exists.</p> <p>Further, the Applicant does not consider that the whitebeam planting proposed on the red oak plantation site (as part of Package 2) or the positive management measures proposed as woodland compensation on Forestry Commission land would require planning permission or any other consents that need to be secured by the DCO.</p> <p>Consent would not be required under the Conservation of Habitats and Species Regulations 2017, regulation 63(1)(b) for planting whitebeam on the red oak plantation site (which is within the Avon Gorge Woodlands SAC) because the proposed whitebeam planting is directly connected with the management of the SAC by the Forestry Commission (see regulation 63 below). The alternative woodland compensation site on Forestry Commission land is not within the SAC.</p> <p><i>63.—(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—</i></p> <p><i>(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and</i></p> <p><i>(b) is not directly connected with or necessary to the management of that site,</i></p>

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				<p><i>must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.</i></p> <p>The proposed Package 2 activities within the SAC would fall outside of regulation 63.</p> <p>In summary, the alternative planting site in Package 2 and the alternative woodland compensation site on Forestry Commission land cannot be compulsorily purchased because the land is Crown land. However, no relevant consents under the DCO are needed to plant whitebeam on the Package 2 sites. If the agreements with the Forestry Commission relating to this land are completed, this will be sufficient to secure this land to provide the alternative compensation measures proposed under the DCO, and agreed with Natural England, to meet HRA requirements.</p>

