



# MetroWest+

## Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.16 ExA.ISH1.D3.V1 –Applicant's Oral Case and response to Representations at the Issue Specific Hearing 1 (ISH1)

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Version: 1

Date: December 2020



## The proposed Portishead Branch Line (MetroWest Phase 1) Order

### Statement of Case and Applicant's response to Representations at the Issue Specific Hearing (ISH1) held on 7 December 2020 at 10am

#### 1. Introduction

- 1.1 The first Issue Specific Hearing (**ISH1**) for the Portishead Branch Line – MetroWest Phase 1 (**DCO**) application was held virtually on Microsoft Teams on Monday 7 December 2020 at 10am.
- 1.2 The Examining Authority (**ExA**) invited the Applicant to respond to matters raised at the Hearing but also in writing following the ISH. This document summarises the responses made at the ISH 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. Summary of Oral Statement of Case

- 2.1 At agenda item 2 of ISH1, the ExA requested the Applicant provide a brief overview of each part of the draft Development Consent Order (**the draft Order**) in order to set the scene for the following questions and discussion around individual draft provisions.
- 2.2 The Applicant provides at Schedule 1 its full written Statement in respect of the draft Order, detailing the purpose of each part of the draft Order and the key themes. In ISH1 the Applicant's oral submissions are summarised as follows:
  - 2.2.1 The purpose of the draft Order is to grant development consent for a Nationally Significant Infrastructure Project for the new railway between Portishead and Pill together with associated development. The railway will become part of the national rail network and reconnect Portishead to the passenger network by restoring passenger services on what is currently a freight line. The DCO application comprises a new railway line from Quays Avenue to Portbury junction, Work Nos. 1 (in the Applicant's ownership) and 1A (in Network Rail Infrastructure Limited ownership) in the existing rail corridor, plus infrastructure to support the railway.
  - 2.2.2 To Portbury Junction, through Pill, is Work No. 1B which consists of the new passenger line. Work No. 1C is a revised connection from Pill Junction to the East of Pill Viaduct. Pill Junction is where Work No. 1C connects to Work No. 1B.
  - 2.2.3 Works includes new stations at Portishead and Pill and associated car parks, and a new bridge south of Trinity School.
  - 2.2.4 There will be compounds at Sheepway, Ham Green and Clanage Road.
  - 2.2.5 In terms of supporting transport infrastructure, there will be works to the cycle bridleway network, a new bus stop in Pill, and works in Bristol City Council's administrative area to the highway at Winterstoke Road and Ashton Vale Junction. The draft Order also includes temporary powers mainly for the compounds and haul roads.
  - 2.2.6 The draft Order seeks to disapply and modify statutory instruments. In **Part 1** of the draft Order, Articles 1 to 3 are the preliminary provisions which are standard for railway DCOs.
  - 2.2.7 The operative provisions are in **Part 2 – Principal Powers**)

- (a) Article 4 (application and modification of legislation) – concerns temporary powers under the Neighbourhood Planning Act 2017 (not yet in force), and ensuring DCO scheme not subject to Community Infrastructure Levy (CIL).
  - (b) Article 5 (development consent etc. granted by the Order) – relates to powers that are transferable to Network Rail Infrastructure Limited .
- 2.2.8 **Part 3** of the draft Order covers streets, highways and level crossings, and new accesses to the highway network. Public rights of way are sought to be restricted where there is any doubt to their classification.
- 2.2.9 **Part 4** of the draft Order deals with discharge of water.
- 2.2.10 **Part 5** of the draft Order sets out the powers of compulsory acquisition. The Applicant is seeking to secure restrictive covenants over land where rights are being sought.
  - (a) Articles 28 and 29 deal with the ability to override rights over land.
  - (b) Article 33 includes temporary powers over land.
  - (c) Article 34 sets out the 5 year maintenance period for temporary possession post-construction of the project.
- 2.2.11 **Part 6** covers the operation of the railway and confirms that the railway line will be part of the national network. Article 40 deals with the status of operational railway land. Article 45 includes a defence to statutory nuisance.

### 3. Post-hearing submissions in response to matters raised at ISH1

**ATTENDEES:** the Applicant; Network Rail; Bristol City Council (Local Planning Authority); North Somerset Council (Local Planning Authority)

Ref:	Representation by:	Questions/Issues Raised at the ISH	Applicant's Response at the ISH	Applicant's Written Response
1.	ExA	<p><b>Article 22.</b></p> <p>This article deals with the discharge of water. In relation to ExQ1 reference DCO.1.7, the ExA received a response from North Somerset Local Planning Authority (<b>NSC</b>) that an article in relation to maintenance for drainage of water should be included in the DCO. The Applicant appears not to agree with this. Is this something which can be progressed now or is it more appropriate to discuss in January during the hearings which will cover flooding and drainage?</p>	<p>The Applicant wishes to defer this matter to January if acceptable to NSC and the ExA. There are ongoing discussions with the relevant bodies in relation to drainage. It would be useful for the Applicant to have more time to prepare the relevant material.</p>	<p>No further comments.</p>
2.	<p>ExA</p> <p>NSC and BCC</p>	<p><b>Definitions of "commence" and "preparatory activities"</b></p> <p>These definitions were covered by ExQ1 reference DCO.1.8. Have all operations needed been carved out/included in the definitions? NSC and BCC made no further comments. The matter is picked up in the draft Statements of Common Ground (<b>SoCG</b>) and discussions are ongoing.</p>	<p>The Applicant agrees with the summary provided by NSC and BCC – these two definitions are subject to ongoing discussion and will be dealt with in the next update of the SoCG.</p> <p>The Applicant will review other recently made DCOs to consider what additional works might appropriately be specified in</p>	<p>The definition of "Commence has been altered in the revised dDCO submitted for Deadline 3. This revision is being copied to the relevant planning authorities (<b>RPA</b>). The revised definition may be the subject of further discussion at the next ISH.</p> <p>The changed definition now reads:</p> <p>“commence” means beginning to carry out any material operation (as defined in</p>

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		<p>The ExA noted the Applicant should ensure all pre-commencement or preparatory works have been captured. The ExA raised a concern that the works listed are not as wide-ranging as needed. For example, it does not include clearance of vegetation, work to rock faces, works to trees, or erection of protective fencing or laying out of compounds.</p>	<p>the definitions of "commence" and "preparatory activities".</p>	<p>section 155 (when development begins) of the 2008 Act) forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, receipt and erection of construction plant and equipment, utility diversions, <b>laying out of compounds</b>, works to clear watercourses, erection of any temporary means of enclosure, <b>erection of protective fencing</b>, the temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;</p> <p>The Applicant considered including clearance of vegetation, works to trees and work to rock faces but has not done so. This is to ensure that Article 14 of the dDCO remains fully effective in relation to works in the Avon Gorge Woodlands Special Area of Conservation. Outside of the SAC the Applicant does not believe that the proposed vegetation or tree works would require consent and there are no works to rock faces outside of the SAC.</p>
3.	ExA	<p><b>ExQ1 question DCO.1.9</b></p> <p>Both local planning authorities have indicated that they are happy to have works</p>	<p>The Applicant is aware of the query from the RPAs and this has been discussed further with both RPAs. The matter has</p>	<p>The Applicant confirms its submissions made at the ISH. It further refers to requirement 5 which makes it clear that the Master CEMP and COCP applies</p>

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	NSC and BCC	<p>carved out, but a query was raised in relation to how these pre-commencement/preparatory works would be carried out in accordance with the Code of Construction Practice (CoCP) and the Master Construction Environmental Management Plan (CEMP) – how would that be secured?</p> <p>Both LPAs confirmed this matter is subject to ongoing discussions with the Applicant.</p>	<p>not yet been concluded but the Applicant is reviewing the Order drafting.</p> <p>It is the Applicant's intention that either the Master CoCP and CEMP or a COCP and CEMP specific to the relevant stage would apply to all works undertaken pursuant to the Order.</p>	<p>to all activities (save for preparatory activities as defined in schedule 2: Requirements of the dDCO) that are not covered by a stage specific CEMP.</p>
4.	ExA	<p>In relation to the CoCP and Master CEMP, why was the Construction Traffic Management Plan (CTMP) not included?</p> <p>The Master CEMP is a certified document, but this is a framework document. How would this work for preparatory/preliminary activities?</p> <p>Consider adding wording into the definition of "commence" at the end such as "carried out in accordance with CEMP/CoCP". Both items need to be looked at, to make clear those carved out items remain subject to the CEMP/CoCP.</p>	<p>The Applicant confirmed BCC's interpretation – the CTMP is within the Master CEMP.</p> <p>Requirement 5(6) deals with the enforceability of the Master CEMP. In light of the ExA's comments the Applicant will review the current drafting of the Order.</p>	<p>The relevant reference in requirement 5 is now paragraph 5(7). The Applicant believes that the drafting covers the issues raised, as follows:</p> <p>Preparatory Activities – not controlled by the Master CEMP</p> <p>Activities pre Commencement but not Preparatory Activities – Master CEMP applies</p> <p>Activities post Commencement but not within a stage – Master CEMP applies</p> <p>Activities pre Commencement within a stage – stage specific CEMP applies</p>
5.		<p><b>ExQ1 DCO.1.15 – Article 23 (authority to survey and investigate land)</b></p>	<p>The Applicant explained that the power to enter land which may be affected is</p>	<p>The Applicant relies on its submissions made at ISH1.</p>

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		<p>This article extends to land "which "which may be affected by the authorised development".</p> <p>This is a wide-ranging power. The Applicant says the drafting is adopted from recently made orders, but the ExA does not consider this to be justification. Why is this power needed? How does this Article work in practice?</p>	<p>required principally in relation to ecological surveys and similar in relation to badger sets/toads and other ecological issues.</p> <p>The Applicant requires the additional ability to enter land outside of Order limits and investigate for these purposes. This is not a power the Applicant anticipates using to any great extent. However, the Applicant is conscious of the time it will take the examination of the Application to the potential beginning of works, and believes it is appropriate for it to be able to enter land outside of Order limits relying on this simple, quick and precedented power to carry out ecological surveys necessary to check the situation at the time the DCO scheme is implemented.</p> <p>The current drafting does require notice to be given to any landowner affected by this proposed power of entry.</p>	
6.		<p><b>ExQ1 question DCO.1.16 at ExQ1 – Article 24 (compulsory acquisition of land)</b></p> <p>Should 'nothing in this article authorises the acquisition of an interest which is for the time being held by or on behalf of the Crown' be added as 24(3) and if not, why not?</p>	<p>The Applicant advised that the additional wording proposed is not necessary. Section 135 of the Act, by its operations, performs this function.</p> <p>The Applicant referred the ExA to Article 51. A combination of Section 135 of the Act and Article 51 would provide sufficient certainty that Crown land will not be subject to powers of compulsory acquisition.</p>	<p>The Applicant refers to its response at ExQ1 against question DCO.1.16, supplemented by its representations at ISH1 in respect of the combined operation of Section 135 of the Act and Article 51 of the draft Order.</p>



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9.	ExA	<p><b>Requirement 5 (CEMP)</b></p> <p>The ExA stated the Environment Agency wanted to discuss this but are not in attendance at this hearing. They seemed to have a concern about what the CEMP would deliver. Perhaps this is a matter to discuss in the January hearings. The focus seems to be around waste management. Is the Applicant aware of discussions around this?</p>	<p>The Applicant confirmed it has seen the Environment Agency's latest submissions to the ExA dated 23 November 2020 and 1 December 2020.</p> <p>The Applicant remains in dialogue with the Environment Agency but do note that the Environment Agency had issues with Requirement 5 and whether it adequately addresses their concerns at construction stage, drainage and a few other matters.</p> <p>The Applicant agreed to work on this with the Environment Agency ahead of the hearings in January.</p>	<p>The Applicant expects this proposed amendment will be further discussed in January's ISH.</p>
10.	<p>ExA</p> <p>NSC</p> <p>BCC</p>	<p><b>Requirement 8 (temporary fencing)</b></p> <p>The Applicant has suggested alternative wording for this Requirement in its Deadline 2 updated draft Order. Do the LPAs have any views on this?</p> <p>NSC are satisfied with the drafting. Removal of fencing within an LPA approved time period is pragmatic to account for individual circumstances.</p> <p>BCC agree the amended wording is helpful.</p>	<p>No comments from the Applicant.</p>	<p>No further comments from the Applicant.</p>

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11.	<p>ExA</p> <p>NSC</p> <p>BCC</p>	<p><b>Requirement 10 (archaeology)</b></p> <p>Is the Applicant's explanation of this requirement at ExQ1 question DCO.1.37 acceptable to the LPAs?</p> <p>NSC has consulted with their archaeologist who is satisfied with the response.</p> <p>BCC has also consulted with its archaeologist who has not raised any concerns. BCC will check the Applicants response.</p>	<p>The Applicant agreed to seek confirmation from BCC that the amended Requirement 10 is acceptable.</p>	<p>The Applicant has asked confirmation from BCC but the requirement relates only to Works in North Somerset.</p>
12.	ExA	<p><b>Requirement 11 (surface and foul water drainage)</b></p> <p>The ExA stated that NSC advised in the Local Impact Report ("LIR") that it wanted Requirement 11 to be amended. In their response to ExQ1 question DCO.1.38, NSC suggested alternative wording to Requirement 11(1) – does the Applicant want to respond now or respond in writing?</p>	<p>The Applicant confirmed it would respond in writing following the hearing.</p>	<p>The Applicant has been in discussions with the NSC flood risk team and have agreed to include maintenance of drainage of the land (see additional text below in italics) however the finalised wording has not yet been agreed.</p> <p><i>Surface and foul water drainage 11.—(1) A stage of the authorised development must not commence until written details of the surface and (if any) foul water drainage system (including means of pollution control) have, after consultation with the lead local flood authority and the Environment Agency, been submitted</i></p>

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				<p>to and approved by the relevant planning authority.</p> <p>(2) The approved drainage systems for the relevant stage must be constructed in accordance with the approved details <i>and thereafter managed and maintained in accordance with the approved details unless otherwise agreed with the local planning authority after consultation with the lead local flood authority and the Environment Agency.</i></p> <p>(3) This requirement does not apply to currently operational railway land</p>
13.	<p>ExA</p> <p>NSC</p> <p>BCC</p>	<p><b>Requirement 16 (construction hours)</b></p> <p>The latest version of the draft Order submitted at Deadline 2 amends the start time from 6am to 6.30am although access to compounds starts at 6am. The ExA asked if NSC is happy with start times?</p> <p>NSC confirmed it is content with the principle but will confirm. NSC also noted the link with noise and Section 61 Control of Pollution Act notices which will be dealt with through the process.</p> <p>BCC – nothing further to add and content with the proposal in principle.</p>	<p>The Applicant agreed to seek formal agreement from the two RPAs following the hearing and ahead of the January hearings.</p>	<p>The Applicant has spoken with both RPAs. It is anticipated agreement will be recorded in the final SoCGs with the RPAs and the issue can be revisited at January's ISH.</p>





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		<p>The ExA considers there to be duplication between these requirements and Requirement 4. Is the detailed design approval process in Requirement 4 not sufficient to cover these works? They are included in Requirement 4.</p> <p>The ExA's view is either these specific works are taken out of Requirement 4 and there is a standalone Requirement for each, or the issue is dealt with in Requirement 4 completely and Requirements 32 and 33 are deleted.</p>	<p>reference to the "MOVA" system and to make sure that those who are concerned about the proposed mitigation in relation to the Ashton Vale Road exit onto the wider highway network are consulted. This Requirement was provided to give the ExA, Secretary of State and local highway authority (and the affected parties) a degree of comfort that the promised "MOVA" traffic system would be available and functioning in accordance with a timetable.</p> <p>In relation to the bridleway and the ramp (Requirements 32 and 33 respectively) the Applicant is inclined to agree with the ExA's suggestion that these could be dealt with under Requirement 4. However, the Applicant noted the in respect of Requirement 32 the method of construction is not captured by Requirement 4 (but all other details would be).</p> <p>The Applicant agreed to review these requirements and make any necessary amendments in a revised draft Order submitted for Deadline 3.</p>	<p>amended the relevant specific requirements accordingly.</p> <p>Additional definitions have been included in Schedule 2 (Requirements) of the dDCO and the relevant plans removed from requirement 4.</p> <p>References to the relevant plans has been included in the specific requirements to ensure the details submitted are in accordance with the relevant certified plans.</p>
17.	ExA	<p><b>Planting of trees outside of Order limits</b></p> <p>The ExA stated that Natural England at Deadline 2 raised issues in relation to the</p>	<p>The Applicant stated that the ambition is that this will all be dealt with under Requirement 14 and in the Avon Gorge Vegetation Management Plan ("AGVMP").</p>	<p>The Applicant in addition refers to its written submissions following CAH1 (see DCO Document Reference 9.15 ExA.CAH1.D3.V1), at point 26.</p>



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		<p>are any concerns over the specific wording of new Requirement 30.</p>	<p>junction. The Applicant fully understands this.</p> <p>The issue has been resolved between the Applicant and HE with the new drafting agreed. It is designed to ensure that construction worker traffic does not add to the existing traffic conditions at Junction 19 in the peak morning rush hour. Requirement 30 is to be considered in addition to Requirement 16 in relation to any construction site within NSC administrative boundary i.e. Works 1- 24a – for those sites everyone has to be on site before 7.30am.</p> <p>Because Junction 19 is very important to the Port, the Applicant has suggested that a Traffic Management Working Group is convened to look at how Requirement 30 and the management plan submitted under it are managed. This group will include NSC, the Port, NR and HE.</p>	
19.	ExA	<p><b>District Level Licensing ("DLL")</b></p> <p>The ExA said that there has been a lot of discussion regarding DLL for great crested newts ("GCN") being used as an avenue rather than on-site mitigation. If DLL were adopted, would that have an impact on the requirements as drafted?</p>	<p>The Applicant said there would likely be some necessary amendments to the requirements. For instance, the requirement relating to ponds (Requirement 34) would need to be removed if DLL does happen.</p> <p>The Applicant also noted Work 10c has already been constructed so this</p>	<p>DLL arrangements are not finally in place but should be finalised shortly after the Festive break.</p> <p>The Applicant will update the ExA at ISH2.</p>



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		<p>NSC is not aware of any further comments but will review following today's discussion ahead of the January hearings.</p> <p>The ExA requested an action point on this for Deadline 3 to raise any further issues. If the information is to inform those discussions in January it will be required in advance.</p>		
21.	<p>ExA</p> <p>NSC</p> <p>BCC</p>	<p><b>Schedule 17 – certified documents</b></p> <p>(i) The ExA noted the Environmental Statement has been added to this list.</p> <p>(ii) NSC raised a point in connection with the travel plan in relation to the operational line. NSC are still considering/in discussion with the Applicant in response to the information that has recently become available regarding toad migration. This appears to be more significant a point than was previously believed – toads are in more than one location along the length of the line. There are two points to consider there.</p> <p>(iii) BCC said in relation to the construction workers travel plan ("CWTP"), a question was raised as to whether this needs to be captured in the</p>	<p>(i) The Applicant stated that there are two points to address in relation to this:</p> <p>1) there is a typing error at the beginning of Schedule 17 – the Applicant will correct that.</p> <p>2) the Applicant is conscious that amendments to the rest of the draft Order means Schedule 17 is behind and needs updating. The Applicant proposed this could be done in January and will ensure that by the last or penultimate deadline we have a fully articulated revised Schedule 17.</p> <p>The Applicant noted that if the District Level Licensing route is taken, the great crested newt pond drawing in respect of Work 10c would need to come out.</p>	<p>The typographical error has been rectified.</p> <p>The Applicant proposes to update Schedule 17 for Deadline 5 and thereafter at each deadline until the close of examination.</p>

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		<p>DCO or as a requirement. More clarity on this is needed– would this be covered within Requirement 5? Is there an intention to submit information as part of a requirement or is this a certified document?</p>	<p>(ii) The Applicant notes the issue of toad migration and suggested this is best dealt with in the SoCG.</p> <p>(iii) The Applicant suggested these points are picked up in the SoCG. The CTMP is a certified document. However the Applicant notes the wider point as to how this is captured in Requirements.</p>	
22.	ExA	<p><b>Consents and licences and other agreements.</b></p> <p>The ExA sought to clarify the status of the items listed in the Applicant's table of consents and licences [APP-073].</p>	<p>The Applicant referred to its update provided at Deadline 2 [REP2-026].</p> <p>1) Habitat Regulations Assessment (HRA) – the HRA, will be covered in detail at the hearings in January. Stephen Tromans QC will be appearing on behalf of the Applicant. So far as the science is concerned, the Applicant has made good progress on the issues with Natural England. The parties have agreed on delivering Package 2 as set out in the Avon Gorge Vegetation Management Plan (AGVMP) – this is the preferred option. We hope to have the ability to update on this by the January hearings.</p> <p>2) Buildings Regulations approval – the Applicant will deal with such matters post-DCO.</p> <p>3) Consent for working on Site of Special Scientific Interest (SSSI) land – the Applicant anticipates that this will be</p>	<p>The Applicant has no further comments.</p> <p>The Applicant has submitted the LONI at Deadline 3 – see DCO Document Reference 9.21 ExA.FI.D3.V1.</p>

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		<p>ExA – noting there is a Letter of No Impediment (LONI) for bats. Has this been submitted to the examination yet?</p>	<p>progressed by an assent under Section 28 of Wildlife and Countryside Act 1981 as a statutory undertaker will be undertaking the works. Natural England are content and aware of the works. This is set out in the SoCG with Natural England.</p> <p>4) The Applicant is liaising with the Government Legal Department to secure the necessary consents.</p> <p>5) 6) 7) and 9) – various drainage and water related consents – the Applicant notes from the Written Representations that various consents are being indicated to be required. As far as the Applicant is concerned, all of these will be made. The Applicant is not dis-applying any powers. In terms of complying with the consents that are required, the Applicant will make these applications and will cover this in the SoCG with the Environment Agency. Lead Local Flood Authority consent will be dealt with via the LPAs.</p> <p>8) European Protected Species (EPS) Licence &amp; District Level Licensing (DLL) – the Applicant expects to be able to confirm the position with DLL by the January hearings.</p> <p>The Applicant confirmed it would submit the LONI into the examination at Deadline 3.</p> <p>10) Wildlife Licences – the Applicant noted this has been covered with Natural</p>	

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			<p>England in the SoCG. The Applicant expects that the Schedule 8 world plants licence will be issued by Natural England in advance of the works commencing.</p> <p>11) Licence for works affecting badgers – same position as above.</p> <p>The Applicant notes Natural England expects the impact assessment conservation payments. This is not completed yet but the Applicant will make sure the ExA receives an update on this and that all of the other documents align.</p> <p>The Applicant agreed with the ExA that all other consents and licences are post-DCO.</p>	
23.	<p>ExA</p> <p>BCC</p> <p>ExA</p>	<p><b>Additional agreements</b></p> <p>(i) The ExA noted that the LIR from BCC mentioned the pelican crossing on Ashton Road to be updated to a toucan crossing. How will this be secured?</p> <p>BCC said the intention that this was to be captured under a TRO. However, it is not listed in the list of TROs in the DCO. BCC would wish to see this included there.</p> <p>(ii) The ExA queried whether this needs to be detailed in the draft Order. Further, a</p>	<p>(i) The Applicant explained it is their intention to have an agreement under Section 278 of the Highways Act 1980 with BCC to deal with highway works in the Winterstoke Road area.</p> <p>(ii) The Applicant does not consider any amendment to the draft Order are necessary but will check this and agreed to update the consents and licences document to include the Section 278 agreement.</p> <p>(iii) The Applicant explained that it is not expected the off-site tree planting will be a</p>	<p>The Applicant confirms its submission at the ISH.</p> <p>(i) The Applicant proposes that Work 27 and the associated Toucan Crossing would be the subject of a separate agreement under S278 Highways Act 1980 when it is decided that Work 27 will proceed. It is unlikely to be included in the main S278 Highways Act agreement.</p> <p>(ii) The Applicant proposes to provide an updated Consents and licences document at Deadline 4.</p>

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	ExA	<p>Section 278 agreement might be listed in the consents and licences document.</p> <p>(iii) The ExA noted BCC are seeking a contribution to off-site tree planting. How would this be secured? Would this be by a Section 106 agreement?</p> <p>The ExA noted it can only take into account Section 106 agreements which are completed by the close of the examination.</p>	development consent obligation. There are practical difficulties around this. The Applicant will discuss with BCC the best mechanism for securing this payment.	(iii) The Applicant is discussing the process for payment with Bristol City Council and proposes that it updates the ExA at ISH2/3. The Applicant does not envisage that a development consent obligation will be used.
24.	Applicant		<p><b>Article 13 (street works and power to alter the layout etc. of streets)</b></p> <p>The Applicant sought to make the ExA aware of a small matter in relation to Article 13. At ExQ1 question DCO.1.12 the ExA asked the Applicant and local highway authorities to comment on list of activities in Article 13(1) and if this should be expanded. BCC added two new points:</p> <ol style="list-style-type: none"> <li>1) The wording "make and maintain crossovers and passing places" and</li> <li>2) "execute any works of surfacing or re-surfacing of the highway"</li> </ol> <p>The Applicant agrees to inclusion of these amendments. The Applicant will make these changes in the revised Order submitted at Deadline 3.</p>	The additional works have been added to the dDCO submitted for Deadline 3 (DCO Document Reference 3.1, Version 4).

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25.	ExA	<p><b>Change request [REP2-001]</b></p> <p>The ExA received notification of the Applicant's proposed change request at Deadline 2. The change is included in the revised version of the Order also submitted at Deadline 2.</p> <p>The change is the removal of Work 16D – the flood mitigation area on Sheet 5 of the Works Plans.</p> <p>The ExA asked why this should be considered a non-material change?</p>	<p>The Applicant stated that Work 16D was included originally as the Applicant had identified some mitigation that may be required to protect land at Royal Portbury Dock from extreme flood events. In essence the slight change in the width of the small railway embankment meant that there was a slight change in flood storage capacity and potential for a small amount of impact to the Royal Portbury Dock estate.</p> <p>Since the application was submitted the Applicant has given further consideration to this issue. It was also noted from the Port's relevant representation that the Bristol Port Company was not satisfied with the Applicant seeking this area of land, despite the inclusion of the relevant land to protect BPC's interests. This is because the land is identified in the North Somerset Local Plan (Policy DM49) as a potential location for expansion of the Port's estate.</p> <p>Further work was undertaken by the Applicant and this led to the conclusion that very little impact on the Port resulting from the increased flood risk and the additional water would be contained within the Port's existing drainage ditches.</p> <p>The Applicant has held discussions with the Port, Environment Agency and landowner and the parties concluded that Work 16D can be removed. The only compelling case</p>	<p>The Applicant confirms its submission at the ISH.</p> <p>The Applicant was informed on 18 December that the Environment Agency is content with the proposed change.</p> <p>The Applicant will update its</p> <ul style="list-style-type: none"> <li>- draft DCO</li> <li>- Statement of Reasons,</li> <li>- land Plan</li> <li>- Book of Reference and</li> <li>- Explanatory Memorandum</li> </ul> <p>if the Panel confirms it is content with the proposed change.</p>

Ref:	Representation by:	Questions/Issues Raised at the ISH	Applicant's Response at the ISH	Applicant's Written Response
			<p>for compulsory acquisition of the land was that the land was required to carry out Work 16D. The Port agreed the Work was unnecessary. The landowner also objected to the compulsory acquisition of their land. The Environment Agency has advised the Applicant that it does not consider there to be material benefit in Work 16D. Therefore, as agreed with all of the relevant parties, the Applicant proposes to remove Work 16D from the draft Order.</p> <p>The Applicant, in its amended draft Order submitted at Deadline 2, has removed Work 16D. However, the consequential changes have not yet been made (i.e. to the Land Plans, Statement of Reasons, Book of Reference, etc). The Applicant did not consider it appropriate to amend these further documents before the ExA has approved the change, if it is minded to do so.</p> <p>The area of land for Work 16D is very small and would involve lowering the topsoil by about 30cm. Whilst the application indicated that there were environmental impacts at Cattle Creep Bridge, those impacts essentially result in slightly more water in a drainage ditch – nothing material in the Environmental Statement will change.</p>	



Ref:	Representation by:	Questions/Issues Raised at the ISH	Applicant's Response at the ISH	Applicant's Written Response
	NSC	NSC stated it is supportive of the removal of this Work – it is beneficial in ecological terms to see this removed.	<p>confirmation from the Environment Agency that it approves the removal of Work 16D.</p> <p>The Applicant explained there has been engagement with the landowner on a without prejudice basis. The situation is difficult as, until the Applicant has the change request confirmed to it, it continues to have to argue a compelling case for the compulsory acquisition powers in respect of Work 16D. Nevertheless, the discussions are progressing at pace and have been relatively frequent over the last few weeks, and this is expected to continue.</p>	
26.	Ex	<p><b>Freightliner</b></p> <p>The ExA referred to the representations of Freightliner at CAH1 and the required access to their land, which it considers could also result in a change request. The ExA reminded the Applicant that the Examination is a finite period. This is particularly important in relation to changes regarding compulsory acquisition.</p> <p>The ExA explained that if the Applicant is wanting to make a change request the ExA</p>	<p>The Applicant noted the comments and will liaise with Mr Gupta (acting for Freightliner). If there is a change to the access route, this</p>	<p>The Applicant adds to its submission at the ISH that 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 site 17/20 and whilst the negotiation is not yet 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 and 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</p>

Ref:	Representation by:	Questions/Issues Raised at the ISH	Applicant's Response at the ISH	Applicant's Written Response
		needs a minimum of 12 weeks to process this change.	should be dealt with by agreement rather than a change to the Order. The Applicant has no intention or instructions to make such a change request at the moment.	<p>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>

## SCHEDULE 1 – APPLICANT'S STATEMENT DELIVERED AT ISH1

### The Proposed Portishead Branch Line – MetroWest Phase 1 Order

#### Issue Specific Hearing

Monday 7 December 2020

### APPLICANT'S INTRODUCTION TO THE DRAFT DEVELOPMENT CONSENT ORDER

#### 1. ARTICLES OF THE DRAFT DCO

1.1 The revised dDCO (Version 3) is document REP2-003 and the latest Explanatory Memorandum (Version 2) is REP2-006.

1.2 In overview, the purpose of the draft Order is to grant the Applicant development consent for a Nationally Significant Infrastructure Project (**NSIP**) being a new railway between Portishead and Pill in North Somerset together with associated development. The railway will become part of the national rail network following its construction. The NSIP will reconnect Portishead to the passenger railway network by reopening the Disused Railway and by restoring passenger rail traffic to the Existing Freight Line.

1.3 In brief summary the Scheme for which powers are sought comprises:

##### *The NSIP*

1.3.1 A new railway from Quays Avenue in Portishead to Portbury Junction in Pill on the track bed of the Disused Railway (Work Nos. 1 and 1A);

1.3.2 A new railway from Portbury Junction through the village of Pill to a new junction west of Pill Tunnel, on the Existing Freight Line (Work No, 1B); and

1.3.3 A new railway from Portbury Junction, parallel to Work No. 1B, through the village of Pill to a new junction west of Pill Tunnel, on the Existing Freight Line, to connect to Royal Portbury Dock (Work No, 1C).

##### *Associated Development*

1.3.4 New stations at Portishead and Pill together, with new car parks and work to the highway network (including the diversion west of Quays Avenue Portishead), urban realm and public right of way improvements;

1.3.5 A new cycle and pedestrian bridge to the south of Trinity Anglican Methodist Primary School, Portishead and associated new cycle tracks;

- 1.3.6 Permanent maintenance compounds at Sheepway, Severn Road, Pill, Ham Green (all in North Somerset) and Clanage Road in Bristol;
- 1.3.7 Works to the bridleway network in the vicinity of Royal Portbury Dock and an extension of the bridleway under the M5 Avonmouth Bridge east to provide a continuous public right of way to Pill;
- 1.3.8 Works to a bus stop at Pill Memorial Club, Pill;
- 1.3.9 Works to the Winterstoke Road/Ashton Vale Road Junction in Bristol; and
- 1.3.10 Temporary compounds and haul roads.

### **Nature of Proposed Order**

- 1.4 The draft Order seeks to apply and modify statutory provisions concerning the compulsory acquisition of land. It is therefore drafted as a statutory instrument in accordance with sections 117(4) and 120(5) of the 2008 Act.

### **Structure of the draft Order**

- 1.5 **Articles 1-3 are the Preliminary provisions**, standard for railway Orders. Article 1 deals with Citation and Commencement, Article 2 key definitions and Article 3 deals with the application of the Railway Clauses Consolidation Act 1845 to the Order. This follows the precedent of previous DCOs applied for by Network Rail Infrastructure Limited (**NR**).
- 1.6 **Operative Provisions commence at Article 4.**
- 1.7 **Part 2** of the draft DCO sets out the principal powers in the Order.
- 1.8 Article 4 seeks to disapply the not yet in force provisions regarding temporary possession of land in the Neighbourhood Planning Act 2017 and also to make it clear that Community Infrastructure Levy will not apply to the DCO Scheme.
- 1.9 Articles 5-11 deal with the nature of the actual consent for development sought and the transferability of the powers to NR or other parties.
- 1.10 **Part 3-** deals with Streets highways and level crossings. Street works powers are sought, as are powers to temporarily or permanently alter the highway network. Powers to create new accesses to the highway network are also sought.
- 1.11 Articles 20 and 21 deal with level crossings of various descriptions. The majority of crossings are accommodation or occupation crossings but public rights of way are sought to be restricted where there is any doubt as the highway status of the crossing. With the exception of the Barons Close footpath crossing in Bristol all of the crossings are in North Somerset.
- 1.12 Discharge of water and survey powers are dealt with in Part 4 of the draft Order.

- 1.13 **Part 5** deals with compulsory acquisition and analogous powers.
- 1.14 Powers to acquire all interests in land are included, as well as new rights, by reference to schedule 10.
- 1.15 Powers to secure restrictive covenants over land are also included, principally to protect ground reinforcing works. Compulsory acquisition powers have the usual 5 year period for initiating acquisition (Article 26).
- 1.16 Articles 28 and 29 deal with the ability to override interests in land such as rights of way. Article 29 reflects that The Applicant and NR own almost all of the route of the new railway and it was felt a provision not having acquisition as a pre requisite to the override provisions was required.
- 1.17 Article 33 deals with the ability to use land for construction on a temporary basis and there is a power in Article 34 for temporary access for maintenance purposes for a period of 5 years post construction.
- 1.18 The remainder of Part 5 deals with various process for compulsory acquisition are modified by the draft Order and how the compensation code is to be applied in specific situations.
- 1.19 **Part 6** clarifies specific points about the operation of the railway, by explaining the new railway will be operated by NR as part of its railway and the Oder does not affect the provisions of the Railways Act 1993.
- 1.20 Article 40 deals with the status of railway operational land for the purposes of the Town and Country Planning legislation.
- 1.21 **Part 7** deals with a range of miscellaneous issues, including works to trees and hedgerows, defence against statutory nuisance, traffic regulation and the protection of statutory undertakers.
- 1.22 It also covers
  - 1.22.1 the proposal to modify the byelaws of the North Somerset Levels Internal Drainage Board,
  - 1.22.2 the removal of all rights trusts and incidents over the land forming open space proposed for freehold acquisition
  - 1.22.3 certification of documentation and
  - 1.22.4 Arbitration.