



# MetroWest+

## Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.38 ExA.CWR.D6.V1 – Applicant's responses to Written Representations and Interested Parties' ExQ2 responses submitted for Deadline 5

Author: Womble Bond Dickinson (UK) LLP

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**Applicant's responses to the submissions made at Deadline 5**

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
<b>GC General and Cross-topic Questions</b>				
<b>General</b>				
GC.2.2	<p><i>Updates on development</i>  <b>All Relevant Planning Authorities</b></p>	<p>Provide an update of any planning applications that have been submitted, or consents that have been granted since the last set of written questions that could either effect the proposed route or that would be affected by the Proposed Development and whether this would affect the conclusions reached in Chapter 18 and Appendix 18 of the Environmental Statement (ES) [APP-131 and APP-191]?</p>	<p><b>Bristol City Council:</b>            Two applications were identified within BCC's Response to ExQ1 [REP2-036]. For reference these were: Former Ashton Sidings, Clanage Road (BCC application ref. 20/01655/F) and Former Police Dog &amp; Horse Training Centre, Clanage Road (BCC application ref. 20/01930/F).</p> <p>An update on each application is provided below.</p> <p><u>Former Ashton Sidings, Clanage Road - 20/01655/F</u>            This application is still being considered by BCC as Local Planning Authority. A set of revised plans was submitted by the applicant on 25 November 2020. These changes do not have any implications for the MetroWest Phase 1 Application beyond those described within BCC's Response to ExQ1 [REP2- 036].</p> <p><u>Former Police Dog &amp; Horse Training Centre, Clanage Road - 20/01930/F</u>            This application is still being considered by the Ministry of Housing, Communities and Local Government (MHCLG) due to the departure from the development plan (in relation to Green Belt) and an objection to the application from the Environment Agency due to the site's location in Flood Zone 3.</p> <p>There has been no change in circumstance which would result in this proposal affecting the MetroWest Phase 1 Application.</p> <p><u>Conclusion</u></p> <p>There are no further applications that could result in a cumulative impact that would affect the conclusions of Chapter 18 and Appendix 18 of the Environmental Statement [APP-131 and APP-191].</p> <p><b>North Somerset Council:</b></p> <p>Application 19/P/2947/FUL At Royal Portbury Dock - Former BCA site Marsh Lane – erection of extension to</p>	<p>See the Applicant's respond to GC.1.2 [REP3-030].</p> <p>The Applicant agrees with the LPAs that recent planning applications would not affect the ES Chapter 18 In combination and Cumulative Effects. No further action is proposed by the Applicant.</p>

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			<p>existing building and erection of new building to be used for the preparation of cars prior to sale has now been approved.</p> <p>An application at 49 Martingale Way, Portishead (reference 21/P/0301/FUL) has just been submitted for: Change of use from Assisted Living Development comprising 126 apartments and integrated care, support and well-being facilities for the over 60's age group (Use Class C2) to 127 non-age restricted apartments (Use Class C3) with associated changes to soft landscaping and car parking, together with 500sqm of commercial/community space under Classes E (Commercial, Business and Service) and/or F (Local Community and Learning); and 350sqm for health/beauty spa (Sui Generis) or medical/health services (Class E (e)).'</p> <p>An application at Land at Harbour Crescent, Portishead (reference 20/P/2957/MOD) has been submitted for Modification of paragraph 4.1 of first schedule of Section 106 legal agreement concerning trigger for open space bond.</p> <p>It is also worth noting there are development proposals at very early stage (consultation stage) for the Wyndham Way area, close to Portishead Station. For information about this please see the following website:  <a href="https://www.wyndhamway.co.uk/">https://www.wyndhamway.co.uk/</a></p> <p>It is, however, concluded that none of these applications will have an effect on the route and would not be affected by the Proposed Development. We do not consider that this would affect the conclusions reached in Chapter 18 and Appendix 18 of the Environmental Statement.</p>	
GC.2.4	<p><i>Central Government Policy and Guidance</i></p> <p><b>The Applicant</b></p> <p><b>The Relevant Planning Authorities</b></p>	<p>Are there any changes to Government Policy or Guidance, that have resulted from the United Kingdom's departure from the European Union on the 31 December 2020? If yes what are these changes and what are the implications, if any, for the Application?</p> <p><i>This excludes the DEfRA policy paper that was published on 1 January 2021 relating to changes to the Habitats Regulations 2017 which was discussed at the ISH3 [EV-010] and was the subject of an action point [EV-010e] arising from that meeting.</i></p>	<p><b>Bristol City Council:</b></p> <p>BCC is not aware of any changes to Government Policy or Guidance resulting from the UK's departure from the European Union that would have implications for the MetroWest Phase 1 Application.</p> <p><b>North Somerset Council:</b></p> <p>We are not aware of any others.</p>	<p>We refer to our response to Action 1 arising out of ISH2 and ISH3 [REP4-023]. The Applicant has committed to update the relevant documents to reflect the current policy position with particular reference to recent changes in policy on [HRA, doc reference: 5.5, version 3] climate change and the Paris Agreement. This is provided at Deadline 6.</p>

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
GC.2.5	<p><i>Work No 24</i> <i>Chapel Pill Lane, Ham Green</i> <b>North Somerset District Council</b></p>	<p>Mr Tarr referred at the Issue Specific Hearings (ISH) 2 and 3 to an affordable housing scheme proposed at Chapel Pill Lane as part of the emerging Abbots Leigh, Ham Green, Pill and Easton-in-Gordano Neighbourhood Plan [REP2-025]. His subsequent Deadline 4 submission [REP4-056] includes a link to a public consultation on the housing plans. Could NSDC respond to his points regarding whether the project proposals for a permanent access and compound in this location would be enabling development for the proposed housing scheme?</p>	<p><b>North Somerset Council:</b></p> <p>The Council has queried this with the Community Land Trust (the applicants for the housing scheme). They have advised that:</p> <p>The proposed Community Land Trust scheme was devised after MetroWest produced their plans for that area in Ham Green, which include an access track down to the railway by the tunnel portal. The Development Consent Order allows for the areas of land needed to create this track, which will serve both a temporary construction compound during the upgrading of the railway and a smaller permanent compound.</p> <p>The MetroWest project doesn't enable the housing scheme because the part of the access road required for the housing is likely to be built before MetroWest carry out their works. If MetroWest does not go ahead the housing project will be self-sufficient without it. The housing scheme was designed in this way so that it not does not affect the DCO plans.</p>	<p>See the Applicant's response to ExQ2 GC.2.5 [REP5-028]. The access is designed as an access to network Rail's compound allowing emergency vehicle access to Pill Tunnel and not for any other purpose.</p> <p>No further comment.</p>
GC.2.6	<p><i>Green Belt</i> <b>North Somerset District Council</b></p>	<p>Work Nos 24 and 24A (permanent and temporary compound south of Ham Green Lake) would be located in the Green Belt. The Applicant advocates [REP2-013] that the proposal would be local transport infrastructure which needs to be located in the Green Belt and as such would be defined as not inappropriate development in the Green Belt under paragraph 146 of the National Planning Policy Framework (NPPF). However, Paragraph 146 states that this only applies provided the works preserve openness and does not conflict with the purposes of including land within the Green Belt.</p> <p>i) As the proposed compound would be Associated Development are you satisfied that it would fall within paragraph 146 c)? If not, why not and would it fall within any of the categories of development included within paragraph 146?</p> <p>ii) If you are satisfied that paragraph 146 c) (or any of the other exceptions) does apply are you satisfied that the proposal would preserve openness and would not conflict with the purposes of including land within the Green Belt? If not, are you</p>	<p><b>North Somerset Council:</b></p> <p>i) We are satisfied that works no 24 and 24A fall within paragraph 146 c) of the NPPF.</p> <p>ii) We are satisfied that works 24 and 24A would preserve openness and would not conflict with the purposes of including land within the Green Belt. In any case, it is also considered that a case for very special circumstances exist.</p>	<p>The Applicant has no further comment.</p>

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		satisfied that a case of Very Special Circumstances exists?		
GC.2.7	<i>Green Belt</i> <b>Bristol City Council</b>	<p>At ISH3 [EV-010] the location of the Clanage Road depot in the Green Belt was discussed. You advised that you considered that the proposed depot would fall within paragraph 146 c) of the NPPF as it would be local transport infrastructure and would not adversely affect openness. However, the depot is associated development therefore can you:</p> <p>i) Confirm that you are still satisfied that it would fall within paragraph 146 c)? If not, why not and would it fall within any of the categories of development included within paragraph 146?</p> <p>ii) If the ExA was to conclude that openness would not be preserved are you satisfied with the case of Very Special Circumstances provided by the Applicant [Paragraph 6.5.14 onwards, APP-208 and the information contained within the site selection process APP-189].</p>	<p>The Planning Act 2008: Guidance on associated development applications for major infrastructure projects (DCLG, 2013) states that 'Associated Development' requires a "direct relationship" with the principal development and should "support the operation of the principal development." BCC considers that whilst the Clanage Road depot is associated development, the definition as local transport infrastructure is still valid as it has a direct relationship with the railway line and supports the use of that line.</p> <p>As such, BCC considers that the tests of maintaining openness and not conflicting with the purpose of the land set out within para. 146 of the NPPF would still apply to the Clanage Road site.</p> <p>If the ExA was to conclude that openness would not be preserved, BCC would concur with the test for very special circumstances as detailed in the Planning Statement from paragraph 6.5.154 onwards [APP-208].</p> <p>This test outlines a site selection process which concluded that the Clanage Road site is the only appropriate location for the compound, with a compound being required by Network Rail adjacent to the railway on the Bristol side of the Avon Gorge.</p>	See the Applicant's oral case and response to written representations at ISH3 item 52, 53 and 54 [REP4-017].
GC.2.8	<i>Statements of Common Ground</i> <b>The Applicant</b> <b>All Relevant Parties</b>	The Statement of Commonality of Statements of Common Ground submitted at Deadline 3 [REP3-020] lists a number of Statements of Common Ground (SoCG) as " <i>not yet in circulation</i> " why is this and when will they be circulated/ agreed?	<p><b>Western Power Distribution:</b></p> <p>Following WPD's appearance at the compulsory purchase hearing on 4th December, WPD met with the applicant on 15th December to discuss progressing, amongst other things, the Statement of Common Ground. The applicant indicated that a draft SoCG would be provided for WPD's review prior to the year end with the aim to having a draft for consideration by Deadline 4.</p> <p>WPD have since the new year sought a draft SoCG from the applicant and on 29th January suggested we receive a skeleton for our input to progress in advance of deadline 5. We received a first draft SoCG from the applicant on 10th February. Due to half term and availability of the WPD team, we have only had two days to review the draft. At this stage the WPD team is not able to contribute any constructive comments on the draft SoCG other than to note that we acknowledge that the applicant has considered the issues raised at the</p>	Discussions with WPD on the SOCG and appropriate protections continue.

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			<p>CPO hearing and that concessions have been made but that other matters remain unresolved.</p> <p>WPD have agreed with the applicant to a further meeting to discuss the draft SoCG and any outstanding matters and will seek to respond more fully on the outstanding issues as soon as it is able.</p>	
<b>BIO Biodiversity, Ecology and Natural Environment (including Habitats Regulations Assessment (HRA))</b>				
BIO.2.2	<p><i>Amphibian Mitigation</i>  <b>North Somerset District Council</b>  <b>Natural England</b></p>	<p>The Applicant [REP4-017] has advised that it proposes to retitle the "Reptile Mitigation Strategy" as the "Reptile and Amphibian Mitigation Strategy" and to include within it the application of appropriate measures for the protection of amphibians including newts and toads.</p> <p><b>NSDC/ Natural England (NE):</b> Would this address the concerns raised by the Council in its Deadline 4 response [REP-064] and provide a sufficient mechanism to deliver any necessary measures in relation to the toads at Lodway Farm? If not, why not and what measures would you consider necessary?</p> <p><b>Applicant:</b> You indicate that the strategy would be submitted at Deadline 6 (15 March 2021). However, at the ISH3 [EV-010] you advised that the survey of the toads at Lodway Farm would occur in late February/ early March. Would the results of this survey work therefore be available to inform this strategy if it is to be submitted at Deadline 6? If not, when would it be able to be incorporated into the strategy and how, given the limited time to the close of the Examination, would NE/ NSDC views be sought/ incorporated?</p>	<p><b>Natural England:</b></p> <p>Natural England is satisfied with the mitigation approach proposed but will defer to North Somerset Council on the mechanism needed to secure agreed mitigation for the toads at Lodway Farm.</p> <p><b>North Somerset Council:</b></p> <p>With regard to the amphibian requirement, this should be acceptable provided it covers both generic and site specific aspects of amphibian avoidance and mitigation measures where amphibians are identified as an issue, including the Lodway compound mitigation; It should be clear that the submission is intended to inform other relevant processes where Section 41 toad and other amphibians are likely to be a consideration (e.g. stage CEMP submissions, landscaping design and management, water abstraction from water bodies and design of drainage features).</p>	<p>The Reptile and Amphibian Mitigation Strategy will include both generic and site specific avoidance and mitigation measures, as appropriate. The dDCO submitted at DL6 has been amended at Schedule 2, requirement 5 to reflect the retitling of the relevant mitigation strategy (see doc ref: 3.1, version 6).</p>
BIO.2.4	<p><i>Avon Gorge Vegetation Management Plan (AGVMP)</i>  <b>Network Rail</b>  <b>Natural England</b></p>	<p>Network Rail did not specifically respond to BIO.1.7 of ExQ1 [PD-010]. The Applicant states in Appendix 1 to their Oral Case and response to Representations at ISH3 [REP4-018] that "<i>Network Rail has assisted the Applicant in developing the AGVMP and is satisfied that it complements its current arrangements, both in terms of vegetation management and management of the SAC. The measures set out in the AGVMP are</i></p>	<p><b>Natural England:</b></p> <p>The ExA's further written questions invites Natural England (NE) and Network Rail (NR) to respond on the specific points raised by the Applicant in section 3 of REP4-018, and in particular the Applicant's conclusion that "<i>in practice there will be a clear distinction between the works being undertaken under the AGVMP compensation measures and the normal management activities undertaken by Network Rail</i>".</p>	<p>The Applicant has no further comments other than to note that following conclusion of a land agreement between the Applicant and Forestry Commission, the dDCO and Avon Gorge Vegetation Management Plan will secure delivery of woodland habitat compensation measures on Forestry Commission land (as preferred by NE and the relevant planning authority) and not on NR land unless the Secretary of State decides otherwise.</p>

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		<p><i>those that relate to the DCO Scheme.” Can Network Rail confirm this is the case?</i></p> <p>The Applicant states NE’s concern is <i>“in relation to the provision of woodland compensation on Network Rail (NR) land because of the difficulty in distinguishing between the proposed compensation measures and the positive management that NR is already obliged to carry out under the Habitats Directive as the owner of the land”</i>. The Applicant elaborates on these points around the management of the site under <i>“Natural England’s Site Improvement Plan for the SAC (January 2015) together with Supplementary Advice, and Network Rail’s Site Management Statement and Vegetation Management Plan as they develop”</i> in section 3 of REP4-018.</p> <p>NE and Network Rail are invited to respond on the specific points raised by the Applicant in this section, and in particular the Applicant’s conclusion that <i>“in practice there will be a clear distinction between the works being undertaken under the AGVMP compensation measures and the normal management activities undertaken by Network Rail”</i>. Note that the Applicant is also of the view that current positive management measures (as per the Site Improvement Plan, Supplementary Advice, and Network Rail’s Site Management Statement and Vegetation Management Plan) are <i>“for whatever reason are not occurring in the form envisaged in these documents and there is no reason to suppose that situation would change. There is no detail on how they would be achieved or assurance that they will be.”</i></p>	<p>As set out in representations previously submitted, NE has advised that compensation measures for woodland and grassland delivered on NR land within the SAC should be shown to be over and above the ‘normal’ requirements on NR, as the site owner and a public body, to manage the site towards favourable condition. The applicant has accepted this principle, re-stated in section 3 of REP4-018, and has developed an alternative package of compensation measures that we understand is expected to be agreed during the period of the Examination process.</p> <p>In its statement the Applicant notes that <i>“Natural England considers the “normal” measures to be those detailed in Natural England’s Site Improvement Plan for the SAC (January 2015) together with Supplementary Advice, and Network Rail’s Site Management Statement and Vegetation Management Plan as they develop (SOCG section 6.1.8)</i>. This reflects advice we have provided and these documents collectively provide for the best understanding of what site owners or managers are doing, plan to do or should do for the management of the SAC, and on NR land specifically.</p> <p>In the view of the Applicant <i>“..in practice there will be a clear distinction between the works being undertaken under the AGVMP compensation measures and the normal management activities undertaken by Network Rail”</i> and that current positive management measures (as per the Site Improvement Plan, Supplementary Advice, and NR’s Site Management Statement and Vegetation Management Plan) are <i>“for whatever reason are not occurring in the form envisaged in these documents and there is no reason to suppose that situation would change. There is no detail on how they would be achieved or assurance that they will be.”</i></p> <p>The Site Improvement Plan (SIP) was developed in 2015 in partnership with the majority of the Avon Gorge Woodlands SAC landowners and interested parties, including representatives from NR. The plan provides a high level overview of the issues (both current and predicted) affecting the condition of the SAC features and outlines the priority measures required to improve the condition of the features. The SIP provides a basis for agreeing and implementing detailed actions with delivery bodies and landowners, such as through NR’s Site Management Statement (SMS) and Vegetation Management Plan (VMP).</p> <p>Natural England considers that NR’s SMS and VMP represents a commitment by NR to undertake proactive</p>	<p><b>The Applicant's response to Natural England's EXQ2 response on the duplication between the measures that Network Rail is obliged to carry out and the positive management measures in the AGVMP</b></p> <p>Natural England (NE) submitted a response to EXQ2 BIO.2.4 at Deadline 5 (REP5 -042) which expanded NE's view that there is duplication between the positive management measures that Network Rail (NR) has committed to as the owner of the site and the positive management compensation measures proposed by the Applicant on NR land within the SAC, as one of the options to compensate for loss of qualifying woodland.</p> <p>It should be noted at the outset that the Applicant is no longer proposing to deliver the woodland compensation on NR land as the Applicant has now secured Forestry Commission land on which to provide these measures, following discussions with NE. However, the woodland compensation option involving NR land is to be retained as part of the scheme as a fall back in the event that the Secretary determines that the relevant compensation should be delivered on Network Rail land rather than Forestry Commission land.</p> <p>The Applicant accepts that the removal of non-native species is a feature of both NR's Site Management Statement (SMS) and Vegetation Management Plan (VMP) and the Applicant's positive management proposals for woodland compensation on NR land. However, the Applicant is of the view that the woodland compensation measures proposed by the Applicant go significantly further than the managed measures that NR is obliged to deliver (and has committed to delivering) to address non-native species under 'normal' practice. This can be demonstrated by briefly comparing the measures required to be undertaken under NR's normal practice and the woodland compensation measures proposed by the Applicant on NR land in the AGVMP.</p> <p><b>Measures proposed under NR's "normal" practice</b></p> <p>NE has confirmed in its D5 submission (REP5 -042) that it considers the “normal” measures that NR is obliged to undertake to be those detailed in NE’s Site Improvement Plan for the SAC (January 2015) together with Supplementary Advice (March 2019), and Network Rail’s SMS and the integral VMP (2018-2023) as they develop.</p>

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			<p>positive management works that are required to safeguard the interest features of the SAC. These documents, informed by the Site Improvement Plan and Supplementary Advice for the SAC, were granted formal Assent by NE on 13 April 2018.</p> <p>The VMP was produced by NR with the specific objective of <i>“helping define vegetation management, beyond the scope of the SMS, to ensure the safe operation of the railway infrastructure and include the conservation and enhancement of the qualifying features of the Avon Gorge SSSI &amp; SAC.”</i> It detailed a 5 year plan for works which were <i>“designed to restore the areas designated features.”</i> Over the 5 years NR’s aim was to plan, complete, monitor and review these works. Year 1 aims were to use data <i>“to develop the vegetation management work bank for years 2-4, prioritising zones which require more work to develop the qualifying features.”</i> Year 2-4 aims include delivery of a key priority to remove Invasive non-native species (INNS). As we approach year 3 of the plan NE is not aware of any works on the ground or been informed of any further developments from NR regarding their plans for delivery of positive management works. The VMP includes as a measure of success <i>“Reduction of cover and abundance (and ideally eradication) of INNS and seed source which is spreading to and from NR land and impacting on the wider SAC/SSSI habitat.”</i></p> <p>In NE’s view, there is duplication between positive management measures that NR has committed to and should deliver and the positive management compensation measures proposed by the Applicant on NR land within the SAC. The precise extent of duplication is difficult to determine, in part because as the Applicant states it has provided greater detail on its proposals than NR. Nonetheless, it is evident that NR’s SMS/VMP and the Applicant’s positive management proposals on NR land both commit to prioritised management and removal of invasive non-native species.</p> <p>NE accepts that NR has made little progress to date on implementing agreed measures in the SMS and VMP and that the Applicant has set out detailed proposals for positive management measures that would likely be achieved more quickly. It is worth noting that other delivery bodies cited in the SIP have made progress with implementing actions agreed for management and removal of invasive non-native species. We also accept that the positive management measures identified by the Applicant would deliver significant ecological benefit. We</p>	<p>In summary, the measures proposed in NE's Site Improvement Plan to address the issue of non-native species are to: “Effectively control invasive species across the site to reduce impact. Key to ensuring its effectiveness will be a coordinated approach across the whole site” (page 2/15). The target in relation to non-native species in NE's Supplementary Advice is to “Ensure invasive and introduced non-native species are either rare or absent, but if present are causing minimal damage to the feature.” (Table 1, p. 15/30). It is important to note that the actions and targets listed in the NE documents are designed to ensure that the site “contributes to achieving the Favourable Conservation Status (FCS) of its Qualifying Features” (European Site Conservation Objectives for Avon Gorge Woodlands Special Area of Conservation - November 2018) . The concept of Favourable Conservation Status (FCS) is explained in an Inter-Agency statement published on the Joint Nature Conservation Committee (JNCC) website . With respect to habitats, FCS relates to the long-term distribution, structure and function as well as long-term survival of the typical species of the habitat. The conservation status of a natural habitat will be taken as ‘favourable’ when:</p> <ul style="list-style-type: none"> <li>• its natural range and areas it covers within that range are stable or increasing;</li> <li>• the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future; and</li> <li>• the conservation status of its typical species is favourable.</li> </ul> <p>Network Rail’s SMS contains a list of “enhancement operations” (para. 3.2) recommended by NE to ensure that the SSSI/SAC are “in good condition (as a minimum in unfavourable recovering and ideally moving towards favourable)”. The SMS includes the removal of introduced or invasive species as a “secondary but important priority” with a programme and techniques to be agreed with NE following an ecology survey (NR HRA Part A, para A.2). The VMP (which is appended to the SMS at Appendix 6) includes the removal of invasive non-native species in years 2-4 of a five year work plan: “Safety critical species will be felled and treated to prevent regrowth. Non safety critical INNS will be added to a workbank for removal where possible” (VMG 4, para. 3.3).</p>

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			<p>would, however, question whether the lack of progress by a public body like NR in meeting its responsibilities and implementing the SMS and VMP - including those relating to management and removal of invasive non-native species - should be taken to be grounds for authorising similar positive management measures on NR land within the SAC as compensation for the MetroWest Phase 1 project. We acknowledge that this is a matter of interpretation of legislation and guidance for the Examining Authority, as the Competent Authority under the Habitats Regulations.</p>	<p><b>The woodland compensation measures proposed on NR land in the AGVMP</b></p> <p>By contrast, the proposed woodland compensation measures on NR land in the AGVMP comprise clear, focused proposals to address non-native species in specifically targeted areas. The proposed measures would be delivered on 1.45ha of NR land within the SAC to compensate for the loss of 0.73 ha of Tilio-Acerion woodland. The measures, which are detailed in Figure 1 of Annex F and Annex G the AGVMP Ver. 03, focus on selective vegetation clearance to benefit rare whitebeam trees and woodland ground flora by reducing competition and shade from other plants, particularly invasive non-native species and include:</p> <ul style="list-style-type: none"> <li>• Coppicing (of non-whitebeam species) and crown lifting in semi-natural ancient woodland.</li> <li>• Clearance of ivy and bramble from secondary SAC woodland habitat to open up woodland habitat.</li> <li>• Felling of non-native species including sycamore in SAC secondary woodland.</li> <li>• Vegetation clearance around whitebeam trees, particularly invasive non-native species.</li> </ul> <p>The mitigation and monitoring plans set out in the AGVMP have been designed to ensure that the mitigation and compensation measures proposed in respect of the DCO Scheme will be delivered.</p> <p>If this option were to be progressed by the Applicant, the Applicant's view is that it would fully compensate for the adverse effects on the integrity of the European site whilst not prejudicing the ability of NR and NE to agree a VMP that would provide for positive management of the SAC across a greater extent of NR land ownership than the area proposed for positive habitat management compensation by NSDC. NR is a competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) and, as such, subject to duties in respect of the protection, conservation and restoration of European sites. Updated guidance on this was published on 24 February 2021 by the Department for Environment, Food and Rural Affairs, Natural England, Welsh Government and Natural Resources Wales on Habitat: <a href="https://www.gov.uk/guidance/duty-to-protect-serve-and-restore-european-sites">https://www.gov.uk/guidance/duty-to-protect-serve-and-restore-european-sites</a>.</p>

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				<p><b>Conclusion</b></p> <p>NE states in its EXQ2 response: that "The precise extent of duplication is difficult to determine, in part because as the Applicant states it has provided greater detail on its proposals than NR" and also that, "We would, however, question whether the lack of progress by a public body like NR in meeting its responsibilities and implementing the SMS and VMP - should be taken to be grounds for authorising similar positive management measures on NR land within the SAC as compensation for the Metrowest Phase 1 project."</p> <p>The Applicant believes that it has provided more detail on its woodland compensation proposals in the AGVMP than NR has outlined in the SMS and that lack of progress on the part of NR so far in relation to meeting its commitments in the SMS does not mean that it will not undertake works to meet these commitments in the future. The key point is that there are very clear differences between the proposed management measures, in each case in terms of both the level of work involved and the aims of the works themselves.</p> <p>It is clear from NR's SMS that the removal of non-native species is a "secondary" priority and the removal of non-native trees which present safety issues will take precedence over other measures to address this issue (which will only be delivered "where possible"). NR's stated priority in the SMS is the safety of the railway. By contrast, the aim of the Applicant's proposed woodland compensation measures on NR land is to achieve a positive ecological outcome on 1.45ha of woodland on NR land that is more favourable than any outcome that would reasonably be required for the site to contribute to achieving FCS and meet the objectives set out in NR's SMS.</p> <p>The Applicant's view is that the proposed measures go beyond the minimum measures that NR would have been required to undertake to meet its commitments in the SMS and the objectives in NE's Site Improvement Plan and Supplementary Guidance. Given that at the time of the DCO application NR had not yet taken any meaningful action to date in relation to its commitments regarding non-native species in the SMS (see the Applicant's submissions on this matter at Deadline 4 - REP4 -018), it was considered unreasonable to expect NR to go beyond the limited commitments referred to in the SMS to address non-native species and deliver</p>

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				<p>measures at the same level as those proposed by the Applicant in the AGVMP. This level of action is simply not required by the SMS nor is it required to meet the objectives in NE's Site Improvement Plan and Supplementary Guidance. It follows from this that the woodland compensation measures proposed by the Applicant on NR land would be measures undertaken in addition to the routine management measures NR is required to deliver under "normal" practice and would not prejudice the ability of NR and NE to agree a more ambitious VMP.</p> <p>Since the Examination opened, NR has confirmed that the VMP for the line to Portishead will be taken forward as part of a national exercise to comply with NR's new biodiversity standards: Applicant's responses to the Examining Authority's Written Question BIO.1.6 at ExQ1 (DCO Document Reference 9.10 ExA.WQ1.D2.V1). It is not possible to determine now what changes may be made to the NR VMP in light of both this and the updated Guidance of the duty to protect, conserve and restore. NSDC's woodland habitat compensation proposals on NR land would provide greater certainty of measures that could be undertaken in a given timeframe. However, unless the Secretary of State determines that woodland habitat compensation measures should be undertaken on NR land rather than the measures now proposed on Forestry Commission land that are preferred by both NE and the Applicant, this alternative will not be that delivered as part of the DCO scheme.</p>
<b>CI Construction Impacts</b>				
CI.2.2	<p><i>Access at Portbury Hundred</i></p> <p><b>The Applicant North Somerset District Council</b></p>	<p>Permanent access into Portbury Hundred following use of land as a temporary construction compound is required as an alternative farm access following closure of a crossing. However, the scale of the junction would be far bigger than what would be required for an agricultural access.</p> <p>The Applicant's response to ExQ1 at TT.1.3 [REP2-013] states that it is not the intention to alter the access in size or specification once the compound is no longer required for construction. The access is only required to enable access to the land at Elm Tree Farm after construction. Given its location in the Green Belt a large over engineered permanent access would appear to be unnecessary.</p>	<p><b>North Somerset Council:</b></p> <p>We have reviewed the latest Plan TR40011 dated November 2019.</p> <p>Due to the high-speed nature of Portbury Hundred, we consider that the temporary access for the works compound will be appropriate for the permanent agricultural access. The latest plans clearly show that the gateway setback is 20m and no longer. Whilst we would normally require a minimum gateway setback of 12m on an agricultural access, the plans show tracking for a tractor and hay trailer of around 19m total length, so a 20m setback is appropriate for such a vehicle.</p> <p>The width of the access will allow a tractor and trailer to turn in off the highway whilst another is waiting to pull out of the access. This will mean that no part of the incoming vehicle is blocking the highway. Whilst there is no</p>	<p>The Applicant has nothing further to add after responding to ExQ2. See ref CL2.2 of REP5-028.</p>

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
		<p><b>Applicant:</b></p> <p>i) Provide an explanation as to why the access would not be reduced in scale given its Green Belt location.</p> <p>ii) How would its use by vehicles other than those associated with the farmland be prevented?</p> <p><b>NSDC:</b></p> <p>Do you consider the access should be altered to dissuade inappropriate future use following closure of the construction compound?</p>	<p>obvious need for the internal trackway beyond the gates to be 8m wide on an agricultural track, we have no highway view on this.</p>	
<p>Cl.2.3</p>	<p><i>Freight Traffic during Construction</i></p> <p><b>The Applicant</b></p> <p><b>Bristol Port Company</b></p>	<p>What would the alternative arrangements for transport of freight be on the occasions when the existing freight railway line would be closed to enable construction works?</p>	<p><b>Bristol Port Company:</b></p> <p>The possible alternative arrangements, outlined below, are only workable if the Applicant is obliged to agree formally with BPC sufficiently in advance (whether during construction or subsequent outages for maintenance) on each and every occasion that any closure of the freight railway line is proposed. This is a matter between BPC, as a statutory undertaker, and the Applicant, as promoter. It is not concerned with Network Rail's powers under the Railways Act 1993 which BPC is not seeking to restrict through the inclusion of protections in the DCO.</p> <p>It is unreasonable for the Applicant to seek what seems to be an unfettered right unilaterally to close the freight railway line and BPC therefore repeats its earlier objections.</p> <p>Specifically, it is wholly impracticable for the Applicant to assert that work can be carried out without BPC's agreement and, therefore, that any work can ignore the operation of the Port, the carriage of freight for import or export and the proper performance by BPC of its statutory functions.</p> <p>This is not a novel point and BPC therefore fails to understand why the Applicant is being so dogmatic in refusing to accept that the DCO needs to enshrine appropriate and proportionate protections. The Applicant's position is all the more inexplicable because:</p> <ul style="list-style-type: none"> <li>the Applicant's own statement of reasons acknowledges that the railway between Parson Street Junction and Royal Portbury Dock is a Core Trunk Route within the Strategic Freight Network and that work to construct the scheme will have to be timed to</li> </ul>	<p>The Applicant relies on its submissions responding to ExQ2, CL2.3 of REP5-028. The process is governed by the Railways Infrastructure (Access, Management and Licensing of Railway Undertaking) Regulations 2016 (SI no 645 of 2016) and the Network Code. Work on Network Rail's railway should not be controlled by the Order as is suggested by BPC and the processes in the relevant Connection Agreement will provide an appropriate process for notification to BPC. Works to BPC's own railway comprise minor slewing of the railway track to ensure the connection is still made to Network Rail's network and will be undertaken when possessions for Network Rail's railway are in force.</p>

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p>minimise disruption to freight traffic on the existing railway;</p> <ul style="list-style-type: none"> <li>• the Applicant's comments at ExA Q1 GC.1.12 appear to recognise that the issue exists and there is a need to address it;</li> <li>• Network Rail's construction strategy (document 5.4) acknowledges that the rail works will be disruptive and that advance agreement will be needed with the "Port Authorities" (sic) in relation to any works;</li> <li>• the Applicant's own Environmental Statement (document 6.7) also states that the timing of works affecting the track currently used by the freight service will need the agreement of BPC regarding freight movements and possessions (see paras 4.5.247 and 4.5.248); and</li> <li>• clause 5.2.3 (c) of the RPD connection agreement (dated 20 October 2008 entered into between Network Rail Infrastructure Limited and BPC) imposes a consultation obligation on NR not less than 12 weeks before any relevant works to the railway line can take place.</li> </ul> <p>The possible alternative arrangements are described below. The adoption of any alternative arrangement would inevitably add significantly to shipping and stevedoring (cargo handling) timetables and costs and, indirectly, increase inland distribution and other supply chain costs (resulting from, for example, construction/manufacturing delays and extended periods of warehousing and storage).</p> <p><b>Re-scheduling:</b> It might be possible to re-schedule the arrival of cargo at the Port in order to avoid periods when the Applicant and BPC have agreed that the freight railway line can be closed. This may not always be possible and it depends upon a customer's arrangements for shipping the relevant cargo, including the availability of vessels and any specialist cargo-handling equipment, as well as the type of cargo and its intended purpose. For example, the arrival of cargo required for use as part of a large construction project and its onward delivery to site may be subject to significant time sensitivity and any delay could be extremely expensive, causing construction programme delays and disrupting other inter-dependent supply chains for the relevant project. Any re-scheduling would also only be possible as long as it would not cause delays to the Port's future vessel handling schedules, by creating artificial demand peaks and restricting berth capacity.</p>	

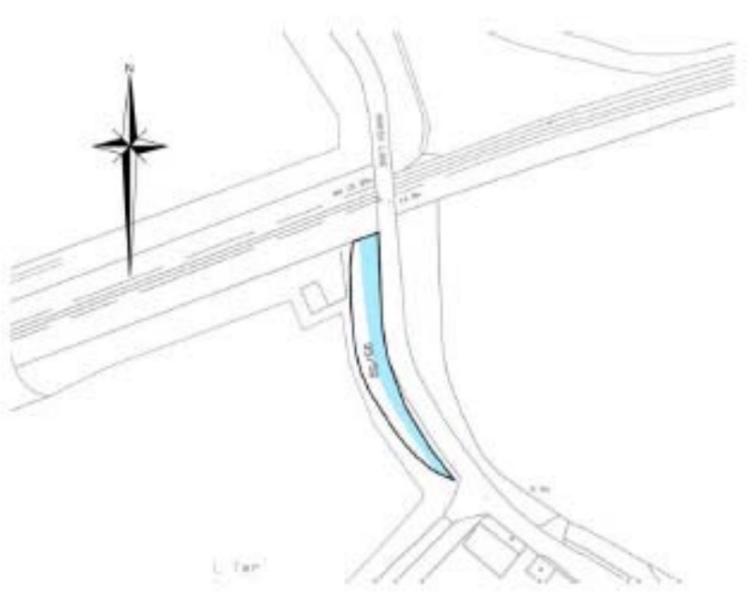
ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p><b>Diversion to Avonmouth:</b> Some cargo could potentially be handled at Avonmouth Docks, but this would depend upon cargo type, applicable vessel size (Avonmouth's lock is much smaller than the RPD equivalent) and, for cargo carried by rail to/from the Port, the availability of train paths. Also, as with RPD, Avonmouth does not have infinite transit storage capacity which would be a further limitation on BPC's ability to accommodate different arrangements. Inevitably, any shift to Avonmouth would cause supply chain disruption and add time and cost.</p> <p><b>Transit storage:</b> Short term storage for import cargo in transit might be available at the Port. However, the availability of suitable storage would depend upon the nature and volume of the cargo concerned. For example, the Port does not have an infinite supply of covered storage to handle sensitive, including weather vulnerable, cargo. Similarly, the Port already has insufficient land available for the transit storage of motor vehicles so it could not accommodate increased demand for vehicle storage caused by closure of the railway line at peak times. Export cargo could be delivered to the Port in advance of its due date for shipment but it would be subject to similar considerations to import cargo.</p> <p><b>Alternative transport modes:</b> Cargo could be moved by road during periods when the railway line was closed, but this would significantly increase traffic volumes on the road network and create adverse environmental impacts. For example, around 60 HGVs would be required to transport bulk cargo and 20 road transporters would be needed to carry cars, in each case as normally carried by one freight train. The Port also handles imports of new rail rolling stock including locomotives, passenger carriages and multiple-units, which are delivered by rail to their service centres. If they could not be moved by rail, each unit would need to be transported by road on a (wide and heavy) specialist low loader. Any proposed use of any form of road transport would require at least six months' advance notice.</p>	
<b>CA Compulsory Acquisition, Temporary Possession and Other Land or Rights Considerations</b>				
CA.2.3	<i>Protective Provisions</i> <b>The Applicant</b>	Provide an update on the progress of negotiations with National Grid Electricity Transmissions and comments on the wording or the suggested Protective Provisions submitted by them at Deadline 4 [REP4-046].	<p><b>WPD:</b></p> <p>WPD note that the applicant has conceded the liability cap in paragraph 81(2)(b) of the protective provisions in its draft SoCG but that the new paragraph 83 is still suggested by the applicant. The applicant has provided WPD with some information to support its position but WPD maintain its objection to this paragraph.</p>	<p>The Applicant refers to its submission at CAH2 (Doc ref: 9.42 ExA.CAH2.D6.V1) regarding NGET's protective provisions.</p> <p>NGET and the Applicant met last week to discuss shared access for land outside of NGET's Order which NGET is seeking to use for access purposes and it is hoped good progress can be made both on this issue and also on the provisions regarding the parties works at Sheepway.</p>

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
CA.2.5	<i>Rock Fencing</i> <b>The Applicant</b> <b>National Trust</b>	<p>Provide an update on whether agreement has been reached regarding the maintenance of the rock fencing and whether or not the National Trust (NT) will be withdrawing its objection to the Compulsory Acquisition (CA) of its land by the end of the Examination. If the NT objection were to remain in place at the close of the Examination explain the implications for section 130 of the Planning Act 2008 (PA 2008)?</p> <p>Following the NT submission at D4 [REP4-047] it would appear that the NT is seeking contributions to cover the cost of the on-going management and maintenance of the rock face and catch fencing. Please detail how this would be secured eg through the land agreement, a Unilateral Undertaking or a section 106 agreement?</p>	<p><b>National Trust:</b></p> <p>No response submitted.</p>	<p>The Applicant refers to its submission at CAH2 (Doc ref: 9.42 ExA.CAH2.D6.V1).</p>
CA.2.9	<i>Royal Portbury Dock</i> <b>The Applicant</b> <b>Bristol Port Company</b>	<p>The Bristol Port Company (BPC) provided a number of documents at Deadline 4 which the ExA expects the Applicant to respond to at Deadline 5. In particular can you advise:</p> <p>i) Why the CA of plots 05/101, 102, 130, 131, 135 and 136 is needed (the Applicant) and what the alternative to these plots is (the BPC).</p> <p>ii) Provide further detail as to why you consider the right, as currently sought, for plot 05/75 is too wide (BPC) and (the Applicant) why you are needing the rights as currently sought?</p> <p>iii) BPC you advise that you have concerns [REP4-058] about some other parcels of land that are not owned by you but that you have rights over which you will need to retain. Can you provide the plot numbers and details of what the rights are and why you would need to retain them?</p> <p>iv) The BPC indicate that the Applicant has advised that they would be willing to remove part of plot 05/50 for freehold acquisition. Both parties provide further detail of how this plot would be affected and whether any other rights would be needed.</p>	<p><b>Bristol Port Company:</b></p> <p>i) According to the Statement of Reasons (document 4.1) ("SoR") the Applicant seeks the compulsory acquisition of these plots for the purpose of construction of the new bridleway to be comprised in Work No. 18. The SoR specifies this as the only purpose for the acquisition.</p> <p>The acquisition of the entirety of plots 05/101, 102, 130, 131, 135 &amp; 136 would not be necessary for the construction of the new bridleway proposed. The extent of the land to be acquired as shown on the Land Plan (sheet 5) is considerably greater than the extent of land required for the specified purpose. The Works Plan (sheet 5) shows the permitted extent of work in relation to Work No. 18 and this is therefore the limit of the land over which compulsory acquisition could be justified. The Applicant has not explained why additional land is required or should be the subject of compulsory acquisition.</p> <p>However, as stated at Issue Specific Hearing 2, BPC does not accept that any of its land should be acquired in order to provide rights of way since it would potentially inhibit BPC's use of that land as part of its statutory undertaking. A public right of way would adequately be created by dedication in the usual way. This is the basis on which, in co-operation with North Somerset Council as local highway authority, all the other footpaths and bridleways on the dock estate were created by BPC and are used today. No acquisition by the Applicant is necessary.</p>	<p>The Applicant refers to its submission at CA2.9 of REP5 – 028 and its submission at CAH2 (Doc ref: 9.42 ExA.CAH2.D6.V1).</p> <p>The Applicant has clarified its position regarding access to Marsh Lane and its willingness to enter into a deed of dedication regarding Work No 18.</p> <p>The Applicant has revised the right described in the dDCO for plot 05/75 (Doc ref: 3.1, version 6).</p>

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p>As indicated at Issue Specific Hearing 2, BPC would be prepared in principle to accommodate the carrying out of Work No. 18 on its land, and to enter into a dedication agreement designating the new bridleway as a public right of way, on condition that:</p> <ul style="list-style-type: none"> <li>a) the bridleway is constructed in the position and in accordance with the details shown on the relevant Works Plan and other drawings, the works for and related to its construction being confined within the extent of work for Work No 18;</li> <li>b) the works will be carried out with the prior approval of BPC (not to be unreasonably withheld or delayed); and</li> <li>c) North Somerset Council (NSC), as local highway authority, will be responsible for the maintenance of the path created, including associated landscaping.</li> </ul> <p>Given this alternative, no compulsory acquisition of the plots referred to above can be justified.</p> <p>ii) The reason for the compulsory acquisition of rights over this plot according to the SoR is "<i>improvement to existing access, access to ecological mitigation land and construction access and haul road</i>" and "<i>[a]ccess to the Easton in Gordano Stream culvert</i>". However, the right over the plot sought in Schedule 10 to the DCO is couched in very general terms, including the right to remain upon the land with plant and machinery for all purposes in connection with (undefined) neighbouring land. Based on this, BPC found it difficult to establish the specific purposes for which rights over its land were being sought: for example what 'neighbouring land' was to enjoy the benefit of the access, for what particular purposes and what kind of vehicles and frequency of use was anticipated?</p> <p>Subsequent comments by the Applicant have indicated that rights over the plot were needed to allow for maintenance access to the nearby cattle creep underbridge. A further purpose was stated as being access for the construction of Work Nos. 16C and 16D (which BPC assumes was intended to be a reference to Works 16B and 16D).</p> <p>Work No. 16D has now been removed from the DCO, and BPC is aware that the Applicant has submitted a request similarly to remove Work No. 16B. No rights over plot 05/75 can therefore now be required in connection with those works. Therefore, as far as BPC is aware, the</p>	

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p>only access requirement that the Applicant could still seek to rely on to justify powers of compulsory acquisition in respect of plot 05/75 is that strictly necessary for maintenance of the cattle creep underbridge.</p> <p>The plot forms part of land held by BPC for the purpose of its statutory undertaking. Rights over the plot on the terms currently proposed in Schedule 10 to the DCO go much further than is necessary or can be justified and would necessarily cause serious detriment to BPC's undertaking. As a minimum, the drafting of the rights in Schedule 10 to the DCO must be amended to reflect the more limited purpose of their exercise (that is, maintenance access to the cattle creep), and to specify the required extent of use (frequency and the nature of vehicles using the access rights), all such amendments to be agreed with BPC. Further, as the access will be used solely by the party with maintenance obligations in respect of the cattle creep it is appropriate and necessary that such party is also responsible for the maintenance of the path itself.</p> <p>Given the limited purposes of any access that may still be required, the extent of land within plot 05/75 over which the Applicant seeks to acquire rights cannot be justified. The width of the strip of access land, and in particular the large section of land at the southern tip of the plot, are disproportionately large for maintenance traffic for a small cattle creep. The Applicant should review and justify its requirement in the light of the changed circumstances.</p> <p>iii) We believe this question relates to BPC's concerns about proposals for compulsory acquisition of land over which BPC requires continued access in connection with its adjacent land. BPC requires that its access rights in respect of these plots are preserved. The plots to which this relates are plots 5/30, 5/61, 5/62, 5/65 and 5/70, all in the vicinity of Marsh Lane. The compulsory acquisition of the land in these plots, or of rights over the land, risks the extinguishment of BPC's existing rights. BPC would suffer serious detriment to its statutory undertaking if its means of access to, or ability to operate from, parts of its land are lost.</p> <p>BPC's written representation (paragraphs 7.3.5(a) and 7.3.6(b)) set out in detail why BPC is concerned about the acquisition of these plots. In assessing the potential impact of the proposed acquisitions, BPC has been hampered by inconsistencies in the available information about the current extent of the public highway in the</p>	

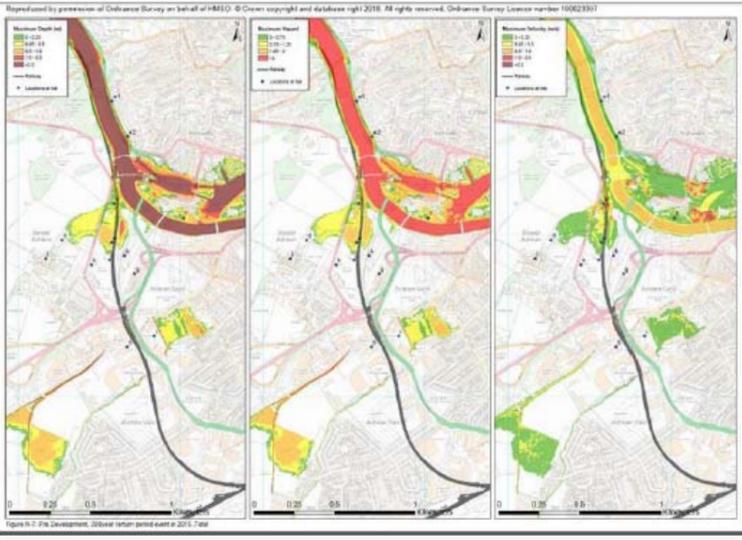
ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p>relevant areas, particularly by discrepancies between highways plans previously provided by the Applicant to BPC, statements in the Book of Reference and statements set out in the SoR. In its written representation (paragraph 7.3.7) BPC suggested it would assist the resolution of all these highway related issues if NSC, as local highway authority, could produce up-to-date and detailed plans of the extent of the public highway in the areas concerned. This has not happened. Therefore, unless and until these issues are resolved to BPC's satisfaction it will require protective provisions so as to enable matters to be regularised and BPC's access rights preserved.</p> <p>In addition, as set out at paragraph 6.2.2 of its written representation, BPC requires that its existing rights over the plots specified in that paragraph must not be extinguished. BPC does not believe that these plots are the subject of the ExA's question. However, the ExA should be aware that the rights held by BPC over these plots relate to the maintenance and operation of BPC's railway as part of its statutory undertaking. Were those rights to be extinguished as a result of the DCO, this would clearly cause serious detriment to the operation of BPC's undertaking.</p> <p>iv) BPC had objected to the proposed compulsory acquisition of plot 05/50 because this land is required by BPC to provide access for an existing electronic communication operator to its adjacent mast. The Applicant has now indicated that it is willing to remove part of plot 05/50 from the Order land subject to acquisition, subject to securing rights of access over the remaining part to maintain the part acquired. The drawing below shows by the blue colouring the maximum extent of the land that BPC considers should be subject to compulsory acquisition.</p> <p>However, as set out in paragraph 4.16 of BPC's written representation, the Applicant has not demonstrated satisfactorily that outright acquisition of the land is necessary and, to the extent it can be shown that the Applicant needs to acquire any further interest in the land, why this could not be achieved by dedication and adoption.</p>	

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
				
CA.2.10	<p><i>Royal Portbury Dock</i>  <b>The Applicant</b>  <b>North Somerset District Council</b></p>	<p>The BPC [REP4-060] has provided a detailed response regarding the number of train movements into and out of the port that it considers are allowed by the planning permissions granted in 2000 and 2011. At the ISH2 [EV-009] you appeared to indicate that you thought that the number of daily movements was limited to a total of 20 movements. Can you:</p> <ul style="list-style-type: none"> <li>i) Comment on the response provided by the BPC; and</li> <li>ii) Comment on the wording suggested by the BPC for a Protective Provision in relation to this matter.</li> </ul>	<p><b>North Somerset Council:</b></p> <ul style="list-style-type: none"> <li>i) The Port Company is correct about the 2011 permission allowing for 40 movements. The condition says the number of freight trains using the Rail Link, shall not exceed an average of 20 trains daily per calendar year in and out of the Portbury docks.</li> <li>ii) No comments on the wording suggested by BPC for a Protective Provision.</li> </ul>	<p>The Applicant refers to its submissions in REP5-028.</p>
CA.2.11	<p><i>Manor House Farm</i>  <b>The Applicant</b>  <b>Mrs Freestone</b></p>	<ul style="list-style-type: none"> <li>i) Following the proposed removal of Works No 16B and 16D from the DCO – confirm whether plot 05/85 would still be required and if it would why, would all of it be required and if so on what basis eg TP or CA?</li> <li>ii) Explain why plot 05A/05 is required on a permanent basis when the Works Plans [Sheet 5, REP3-004] indicate that it would be used as a temporary ecological mitigation area.</li> <li>iii) Explain why plot 05/151 would be required on a permanent basis when the General Arrangement Plans [Sheet 5, REP1-004] indicate that it would be used as part of the temporary construction compound at Lodway Farm and why this is not shown on the Works Plans [Sheet 5, REP3-004].</li> </ul>	<p><b>Mrs Freestone:</b></p> <p>No response submitted</p>	<p>The Applicant refers to its submissions in REP5-028.</p>

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
		iv) Provide an update on negotiations with regards to these plots and an indication as to whether these are likely to be successfully concluded before the close of the Examination and if so whether the Owners of this land will be withdrawing their objection to the CA of their land.		
CA.2.12	<p><i>Freightliner</i>  <b>The Applicant</b>  <b>Freightliner</b></p>	<p>Provide an update on the negotiations regarding the acquisition of plots 17/05, 17/15, 17/20 and 17/10 with particular reference to plot 17/15 (the access across the site) where there were concerns regarding the operational viability for the current users. Indicate whether these are likely to be successfully concluded before the close of the Examination and if so whether the objection to CA of these plots is likely to be withdrawn before the close of the Examination.</p>	<p><b>Town Legal LLP for Freightliner Ltd:</b></p> <p><u>Plots 17/05 and 17/10</u></p> <p>As noted in our Deadline 2 written representations dated 23 November 2020 Freightliner is negotiating heads of terms for an option agreement with Network Rail for sub-leases of these two plots. We noted in our representations that negotiations had stalled for months due to the failure by Network Rail to respond to correspondence.</p> <p>On the date that we submitted those written representations, Network Rail responded to the correspondence and there have been further discussions between the parties since then. Freightliner has today received correspondence which it is considering. Freightliner remains hopeful that the heads of terms can be agreed before the close of the Examination.</p> <p><u>Plots 17/15 and 17/20</u></p> <p>We wrote by email to the Applicant's solicitors Womble Bond Dickinson on 23 November 2020 noting the failure of Network Rail to progress the heads of terms as set out above but also noting that the Applicant would need to provide assurances that it would not exercise its CA powers under the Order. The following comprises the relevant text in the email:</p> <p><i>"In addition to settling the heads of terms and then option agreements for plots 17/05 and 17/20, we will need agreement with the Promoter and NR in relation to the following matters in order to allow Freightliner to withdraw its RR.</i></p> <ul style="list-style-type: none"> <li>• <i>That the Promoter will not exercise its temporary possession powers in relation to plots 17/05 and 17/20.</i></li> <li>• <i>That the Promoter will not exercise its temporary possession powers in relation to plots 17/10 and 17/15 provided that Freightliner provide an appropriate means</i></li> </ul>	<p>Terms for agreement between Network Rail and Freightliner have been agreed and the agreement is now being documented.</p>

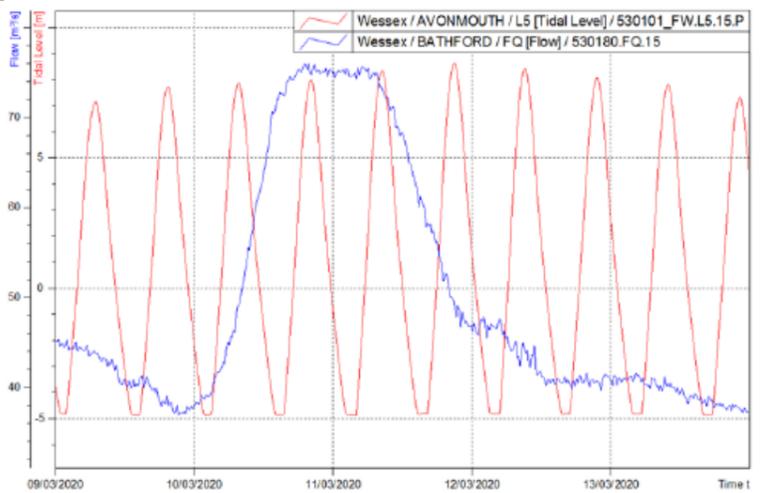
ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p><i>of access to NR over its land plots 17/04 and 17/20 for the duration of the sub-leases, as set out in the heads of terms (as you will recall the proposed use of plot 17/15 would blight the land generally and prevent any commercial sub-letting from taking place, which would in turn substantially increase Freightliner's compensation claim).</i></p> <p><i>We're open to suggestions as to how best to document this – whether in the option agreements or by a separate tri-partite agreement but clearly this need to be progressed quickly given the examination timetable.”</i></p> <p>We have not received a response to that email. Although it should be relatively straightforward to resolve the issues relating to plot 17/15, in the absence of any engagement by the Applicant we do not think it likely that Freightliner's objection can be withdrawn before the close of the Examination and we will invite the Examining Authority to recommend that no CA powers are granted in relation to the relevant plots.</p>	
CA.2.13	<p><i>Sheepway Farm</i>  <b>The Applicant</b>  <b>Mr Crossman</b></p>	<p>Provide an update on negotiations regarding the acquisition of plots at Sheepway Farm following the discussion at the CAH [EV-008], with particular reference as to the progress made regarding the provision of an alternative means of crossing the line, and whether these are likely to be successfully concluded before the close of the Examination and if so whether the objection to the CA of these plots is likely to be withdrawn before the close of the Examination.</p>	<p><b>Mr Crossman:</b></p> <p>We are still in negotiations with the applicant.</p> <p>Progress has been made but no agreements yet.</p>	<p>Negotiations continue with the interested party.</p>
CA.2.14	<p><i>Work No 27</i>  <b>Osborne Clarke LLP</b>  <b>on behalf of Babcock</b>  <b>Integrated</b>  <b>Technology Ltd</b>  <b>BNP Paribas on</b>  <b>behalf of London</b>  <b>Pension Fund</b>  <b>Sutherland PLS Ltd</b>  <b>on behalf of Manheim</b>  <b>Auctions Ltd, ETM</b>  <b>Contractors Ltd and</b>  <b>Flynn Ltd</b></p>	<p>At Deadline 4 [REP4-027] the Applicant has requested the deletion of Work No 27 (foot and cycle track and ramp of 140 metres in length, shown on sheets 15 and 16 of the works plans, from the A370 classified road known as Ashton Road to Ashton Vale Road to the west of Parson Street to Royal Portbury Dock railway, Ashton together with alterations to utilities apparatus, drainage, fencing, lighting and landscaping) from the Proposed Development.</p> <p>Bristol City Council [REP4-039] as the relevant Highways Authority has confirmed that it has no objection to this request.</p> <p>Are there any comments you wish to make regarding the removal of this work?</p>	<p><b>BNP Paribas on behalf of LPPI Real estate Fund:</b></p> <p>We have no further comments on this particular matter and note the proposed removal of these works from the scheme.</p> <p><b>Osborne Clarke on behalf of Babcock:</b></p> <p>We note that the Applicant has requested the deletion of Work No 27 (foot and cycle track and ramp of 140 metres in length, shown on sheets 15 and 16 of the works plans, from the A370 classified road known as Ashton Road to Ashton Vale Road to the west of Parson Street to Royal Portbury Dock railway, Ashton together with alterations to utilities apparatus, drainage, fencing, lighting and landscaping) from the Proposed Development.</p>	<p>The Applicant has no further comment. It wrote to Babcock's solicitors on 12 March 2021 confirming Work No. 27 has been removed.</p>

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p>We further note that Bristol City Council have confirmed that the works are not needed as part of the scheme.</p> <p>The Applicant has previously confirmed in writing to Babcock that agreement with Babcock regarding utility relocation, access to Babcock's site and any required security arrangements will be necessary before the works could be constructed and that this reassurance should provide a legitimate expectation that Babcock are able to rely upon.</p> <p>On the understanding that the proposal to remove Work No 27 is a bona fide change to the scheme and will not be reintroduced later without the agreement of Babcock, as assured previously in writing, our client is minded to confirm its support for the scheme. This is providing that removal of Work No 27 is confirmed.</p>	
<b>FRD Flood Risk and Drainage</b>				
FRD.2.1	<p><i>Clanage Road</i>  <b>The Environment Agency</b></p>	<p>It was evident from the discussion at the ISH [EV-010] that there remains a dispute as to whether the site of the proposed depot at Clanage Road falls within Flood Zone 3A or 3B. It is clear from the evidence submitted that the Environment Agency's (EAs) position is that it falls within 3B. On a without prejudice basis to your position can you:</p> <p>i) Advise what your advice would be if the compound was found to be in Flood Zone 3A?</p> <p>ii) As requested by the ExA plans have been submitted by the Applicant at Deadline 4 [REP4-026] to show the proposed Clanage Road compound overlaid onto the Floodplain map. However, this simply shows it as being within Flood Zone 3 and does not differentiate between Flood Zone 3A and 3B, can you provide a more detailed map at a scale of 1:1250 or lower showing which areas of this site are in Flood Zone 3A, and which are in 3B.</p>	<p>i) In accordance with the NPPF, land in flood zone 3a can be used for development purposes, provided there is no consequential loss of floodplain storage. The proposed welfare unit is permissible, subject to the finished floor level (FFL) of the unit being raised above the flood level, and appropriate floodplain compensation provided. Alternatively, the unit could be raised out of the floodplain on a supporting structure, with a void underneath the building, to allow the free passage of flood water. Any such arrangement must be appropriately maintained, to avoid the accumulation of debris etc for the lifetime of the development. The storage of materials in flood zone 3a should not be permitted, unless appropriate floodplain storage compensation is provided.</p> <p>ii) The definition of flood zone 3b, functional floodplain, is land that floods for a return period of 1 in 20 or less. The Agency's flood map does not distinguish between flood zone 3a and 3b. The map the Agency provided with its previous response was an extract of the applicant's own FRA. That map showed the extent of flooding for a 1 in 20 year tidal event, hence it represented the functional floodplain, as modelled by the applicant. The applicant's own modelling and mapping therefore identifies the site as functional floodplain. Flood zone 3a was not shown on the previously submitted map however, the map hereunder does show the area of flood zone 3a. The map below shows the extent of the 1 in 200 year flood (coloured area) pre-development, without climate change, also called flood zone 3a.</p>	<p>Paragraph 5.109 of the NNNPS states that for essential infrastructure it is Flood Zone 3b that should result in no net loss of floodplain storage and not impede water flows.</p> <p>The Applicant's FRA Addendum submitted at Deadline 6 summarises it's case that the compound falls outside Flood Zone 3b.</p> <p>Rep4-026 shows the Applicant's map of areas in Flood Zone 3a and 3b.</p> <p>The Applicant proposes amendments to requirement 31 of the dDCO and amendments to the CEMP, submitted at Deadline 6 to make the site as resilient as practicable to flooding.</p>

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
				
FRD.2.2	<p><i>Clanage Road</i>  <b>The Environment Agency</b></p>	<p>In your Deadline 4 response [REP4-043] you indicated that in order to maintain flood capacity at the proposed Clanage Road compound the welfare unit would need to be raised off the ground and no materials of any kind could be stored at ground level.</p> <p>i) By how much would the welfare cabin and any material storage need to be raised above ground level in order to maintain the flood capacity of the site?</p> <p>ii) Are you satisfied that the DCO as currently drafted would provide a sufficient level of control over these elements if this solution to flooding concerns needed to be pursued? If not what changes/ additional drafting would be needed to secure this detail or would this information need to be provided/ agreed at the Examination stage?</p>	<p>i) In order to ensure the safety of the welfare unit and its users, its FFL must be raised above the 1 in 100 year flood level, with the prescribed allowance for climate change. As detailed above, to avoid an adverse impact on third party interests, the loss of land resulting from the welfare unit, will need to be compensated, unless a void is provided and maintained underneath the unit to allow the free passage of flood water.</p> <p>ii) The Agency is satisfied that the elevation of the unit, as proposed, is acceptable however, details have not <b>been provided regarding how it will be maintained for the lifetime of the development.</b> The Agency is currently in discussion with the applicant's representatives regarding the means by which the highlighted issues will be controlled.</p>	<p>As above, the Applicant proposes amendments to requirement 31 of the dDCO and amendments to the CEMP, submitted at Deadline 6 to make the site as resilient as practicable to flooding.</p>
FRD.2.3	<p><i>Clanage Road</i>  <b>The Applicant</b>  <b>Environment Agency</b>  <b>Bristol City Council</b></p>	<p>i) Provide details, if any are available, as to how often this site has flooded in the last ten years or signpost where in the application documentation this information can be found.</p> <p>ii) In item 34 of REP4-017 the Applicant states that during the 12 March 2020 flood event, peak levels at Avonmouth were slightly above the CFB2018 20 year return period EWL but did not result in flooding to the railway or the proposed Clanage Road depot site and concludes that this provides further evidence as to the site of the compound being outside of Flood</p>	<p><b>Bristol City Council:</b></p> <p>BCC's Flood Risk Manager has advised that BCC does not hold any records of this site flooding in the last ten years and our investigation into the March 2020 flood event did not identify any flooding during that event at this site.</p> <p><b>Environment Agency:</b></p> <p>i) Please see the attached document for historical flood events [too big to paste into this table, please therefore see the original submission at <a href="https://infrastructure.planninginspectorate.gov.uk/wp-">https://infrastructure.planninginspectorate.gov.uk/wp-</a></p>	<p>The Applicant can find no records of the Clanage Road compound experiencing a flooding event due to tidal or fluvial flooding in the past 50 years.</p> <p>Appendix A to the FRA Addendum, which will be submitted as soon as possible after Deadline 6, provides photographs of an observed flooding event in Bristol on 12 March 2020.</p> <p>The gauge information is taken from the official gauge map site</p>

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		<p>Zone 3B. Can the EA comment on these points given their stance [REP4-043] is that "...land which would flood with an annual probability of 1 in 20 or greater, or is designed to flood in an extreme event, is viewed as functional floodplain."</p>	<p><a href="https://www.gaugemap.co.uk/#!/Detail/8241/3586/2020-03-11/2020-03-12">content/ipc/uploads/projects/TR040011/TR040011-001182-Environment%20Agency.pdf</a> ]. This data corroborates the information provided by the applicant within the FRA (paragraph 4.2.12 page 4-7. Please note, the Agency is only able to record events that have been reported. Accordingly, there could have been flooding events in the vicinity that have not been reported.</p> <p>ii) The applicant's model, based on the CAFRA model and made site specific by improving the ground elevation data within the model, was run for a tidal and fluvial combination, based on the FD2308 joint probability calculation spreadsheet. The condition set out in the model to represent a 1 in 20 year tidal event is a 20 year tidal design boundary return period, combined with a mean annual flow. See table 2 hereunder, extracted from Appendix N part 1 page 11.</p> <p><i>Table 2. Tidal design events – joint tidal and fluvial combinations</i></p> <table border="1" data-bbox="1228 793 1982 1073"> <thead> <tr> <th>Simulated tidal event return period (yrs)</th> <th>Tidal design boundary return period (yrs)</th> <th>Fluvial design boundary return period (yrs)</th> </tr> </thead> <tbody> <tr> <td>Non-flood</td> <td>Base</td> <td>'mean' (i.e. non-flood)</td> </tr> <tr> <td>1</td> <td>1</td> <td>'mean' (i.e. non-flood)</td> </tr> <tr> <td>2</td> <td>2</td> <td>'mean' (i.e. non-flood)</td> </tr> <tr> <td>5</td> <td>5</td> <td>'mean' (i.e. non-flood)</td> </tr> <tr> <td>10</td> <td>10</td> <td>'mean' (i.e. non-flood)</td> </tr> <tr> <td>20</td> <td>20</td> <td>'mean' (i.e. non-flood)</td> </tr> <tr> <td>75</td> <td>75</td> <td>'mean' (i.e. non-flood)</td> </tr> <tr> <td>100</td> <td>100</td> <td>'mean' (i.e. non-flood)</td> </tr> <tr> <td>200</td> <td>200</td> <td>6</td> </tr> <tr> <td>1000</td> <td>1000</td> <td>12</td> </tr> </tbody> </table> <p>When the model is run with the above condition, it predicts 0.53 m of flooding of the railway at Bower Ashton and Clanage Road. The photos taken on the 12 March 2020 shows some flooding on the site. The Agency is surprised by the applicant's contention that the model is over-predicting flooding to that extent. The model was calibrated, and the applicant made it more site specific by adding topographic information. The model was also reviewed and validated by the Agency's National Evidence and Risk team.</p> <p>The applicant has not provided sufficient data to review in respect of this matter, for example, it is not known which set of data the applicant is referring to. The Agency is aware that one of the gauges at Avonmouth has been damaged by a boat. Has the applicant used that gauge?</p> <p>The Agency is satisfied that flooding would occur at Clanage Road, if the right combination of tidal and fluvial event is reproduced, in accordance with the conditions detailed within the model. With regard to the observed data on the 12 March 2020, the water level measured in the River Avon at Ashton Vale was within the 'Typical Range'. Please see the gauge record hereunder, which</p>	Simulated tidal event return period (yrs)	Tidal design boundary return period (yrs)	Fluvial design boundary return period (yrs)	Non-flood	Base	'mean' (i.e. non-flood)	1	1	'mean' (i.e. non-flood)	2	2	'mean' (i.e. non-flood)	5	5	'mean' (i.e. non-flood)	10	10	'mean' (i.e. non-flood)	20	20	'mean' (i.e. non-flood)	75	75	'mean' (i.e. non-flood)	100	100	'mean' (i.e. non-flood)	200	200	6	1000	1000	12	<p><a href="https://www.gaugemap.co.uk/#!/Detail/8241/3586/2020-03-11/2020-03-12">https://www.gaugemap.co.uk/#!/Detail/8241/3586/2020-03-11/2020-03-12</a></p> <p>Avonmouth Tidal gauge – shows the following tide levels:</p> <p>8.626m AOD - at 9pm on 11 March ie: water level is above the 1 in 20 year event shows no flooding.</p> <p>8.44m AOD - 9am 12 March (when photographs taken)</p> <p>8.068 - 12/3 9.30 pm 12 March</p> <p>The EA have used a different gauge at Ashton Vale Gauge which is for Longmoor Brook. However, the EA also refer to the Avonmouth gauge and the figures quoted are the same as above but the EA hasn't quoted the evening on 11 March when the water levels were above the 1 in 20 year event. The photographs show no debris hence no overtopping on the rail line in a 1 in 20 year event.</p> <p>It is also standard practice in flood forecasting for modelling to be one data source but to also take account of observed local data.</p>
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			<p>was extracted from the gauge map website for the Ashton Vale gauge.</p>  <p>With reference to the Agency's gauge at Avonmouth for the 12 March (the red trace on the graph hereunder) at 09:00 the tide level reached 8.44m (approximately a 10 year event based on CFB data below). At 21:30 the tide reached 8.07m (approximately 1 year event). At the same time, the river level (blue trace on the graph) in the River Avon at Bathford, upstream of Bristol, was going down. The River Avon on the 12 March was within its Typical Range. The Agency would therefore not expect a flood event under those circumstances.</p>	

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			 <table border="1" data-bbox="1291 655 1816 1234"> <thead> <tr> <th>Feature</th> <th>Value</th> </tr> </thead> <tbody> <tr> <td>CFB_Extreme_Sea_Levels_2018</td> <td></td> </tr> <tr> <td>Location</td> <td>UK MAINLAND</td> </tr> <tr> <td>(Derived)</td> <td></td> </tr> <tr> <td>(Actions)</td> <td></td> </tr> <tr> <td>Location</td> <td>UK MAINLAND</td> </tr> <tr> <td>Chainage</td> <td>_380</td> </tr> <tr> <td>X_BNG</td> <td>348247.79999999999</td> </tr> <tr> <td>Y_BNG</td> <td>181063.60000000001</td> </tr> <tr> <td>BASE_YEAR</td> <td>2017</td> </tr> <tr> <td>HAT_OD</td> <td>8.20000000000</td> </tr> <tr> <td>MHWS_OD</td> <td>6.76000000000</td> </tr> <tr> <td>T1</td> <td>8.11000000000</td> </tr> <tr> <td>T2</td> <td>8.22000000000</td> </tr> <tr> <td>T5</td> <td>8.37000000000</td> </tr> <tr> <td>T10</td> <td>8.49000000000</td> </tr> <tr> <td>T20</td> <td>8.61000000000</td> </tr> <tr> <td>T25</td> <td>8.65000000000</td> </tr> <tr> <td>T50</td> <td>8.79000000000</td> </tr> <tr> <td>T75</td> <td>8.86000000000</td> </tr> <tr> <td>T100</td> <td>8.92000000000</td> </tr> <tr> <td>T150</td> <td>9.01000000000</td> </tr> <tr> <td>T200</td> <td>9.07000000000</td> </tr> <tr> <td>T250</td> <td>9.12000000000</td> </tr> <tr> <td>T300</td> <td>9.16000000000</td> </tr> <tr> <td>T500</td> <td>9.27000000000</td> </tr> <tr> <td>T1000</td> <td>9.43000000000</td> </tr> <tr> <td>T10000</td> <td>10.05000000000</td> </tr> <tr> <td>CF_T1</td> <td>8.10000000000</td> </tr> </tbody> </table> 	Feature	Value	CFB_Extreme_Sea_Levels_2018		Location	UK MAINLAND	(Derived)		(Actions)		Location	UK MAINLAND	Chainage	_380	X_BNG	348247.79999999999	Y_BNG	181063.60000000001	BASE_YEAR	2017	HAT_OD	8.20000000000	MHWS_OD	6.76000000000	T1	8.11000000000	T2	8.22000000000	T5	8.37000000000	T10	8.49000000000	T20	8.61000000000	T25	8.65000000000	T50	8.79000000000	T75	8.86000000000	T100	8.92000000000	T150	9.01000000000	T200	9.07000000000	T250	9.12000000000	T300	9.16000000000	T500	9.27000000000	T1000	9.43000000000	T10000	10.05000000000	CF_T1	8.10000000000	
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			<p>The Agency would therefore contend that the 12 March 2020 event was not a 1 in 20 event, which would explain why no flooding was observed at Bower Ashton/Clanage Road on the 12 March 2020. Accordingly, the Agency must disagree with the applicant's contention that the model is over-predicting flooding.</p>	
FRD.2.4	<p><i>Clanage Road</i>  <b>The Applicant</b>  <b>Bristol City Council</b></p>	<p>The EA has provided detailed comments at Deadline 4 [REP4-043] in response to flooding which the ExA expect the Applicant to respond to at Deadline 5. Furthermore, the ExA is expecting the parties involved to try to resolve this matter before the close of the Examination. In the interim:</p> <ul style="list-style-type: none"> <li>i) As set out above the EA has indicated that to maintain flood capacity at the site the proposed welfare cabin and materials would need to be stored above ground level. <b>Applicant:</b> Is this practicable and would these stipulations be within the parameters allowed for by the DCO and as assessed in the ES, Flood Risk Assessment (FRA) and other relevant application documents?</li> <li>ii) <b>Bristol City Council:</b> If the welfare cabin and material storage were to be raised off the ground given the location of the site within the Green Belt would the proposal still meet the requirements of paragraph 146 of the NPPF which states that local transport structure would not be inappropriate development provided they preserve openness?</li> <li>iii) <b>Bristol City Council:</b> Are you satisfied that the DCO as currently drafted would give you sufficient control over these elements if this solution to flooding concerns needed to be pursued? If not what changes/ additional drafting would be needed to secure this detail or would this information need to be provided/ agreed at the Examination stage?</li> <li>iv) <b>Applicant:</b> Given the concerns raised regarding the flooding of this site could the Proposed Development proceed without it?</li> <li>v) <b>Applicant:</b> If the Proposed Development could not proceed without a depot in this location are there any alternative solutions such as the depot only being used for access and material being imported on a just in time basis and not stored at the site</li> </ul>	<p><b>Bristol City Council:</b></p> <p>Having discussed this issue with the Applicant, BCC understands that the proposal to raise the welfare cabin and material storage was included within the Environmental Impact Assessment and forms part of the scheme proposals.</p> <p>As a result, BCC considers that the conclusions of the Environmental Statement [APP-106 and APP-101] and Planning Statement [APP-208] in respect of Landscape and Visual Impact and Green Belt remain valid in this case and that this raising would preserve openness.</p> <p>Notwithstanding the above, it is understood that the proposal to raise the welfare cabin and material storage only applies to the construction compound, and therefore any visual impact would be temporary in nature.</p> <p>BCC understands that this has formed part of the proposals since submission and therefore no further information would need to be provided or agreed.</p>	<p>REP5-028 provides the Applicant's response.</p> <p>The Applicant also proposes amendments to requirement 31 of the dDCO (Doc: 3.1, version 6), submitted at Deadline 6, and amendments to the CEMP, which will be submitted as soon as possible after deadline 6, to make the site as resilient as practicable to flooding.</p>

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
		that could be used to address this concern regarding flood capacity? If so how would these alternatives be secured?		
FRD.2.5	<b>Emergency Plan</b> <b>Bristol City Council</b> <b>North Somerset</b> <b>District Council</b>	i) Do your emergency planning officers wish to comment on the principles of the detailed operational Flood Plan [REP3-015], building from the outline operational flood plan in Appendix T of the FRA [APP-092]? ii) Is it appropriate that this plan forms an appendix to Version 2 of the SoCG between NSDC, Network rail Infrastructure Ltd and the EA, as opposed to a standalone application document, or as part of a revised FRA? iii) The EA [REP4-043] also refer to the need for an "Emergency and Evacuation Plan" to be agreed with them. If this is a separate document, how does it interface with the flood plans as set out above?	<p><b>Bristol City Council:</b></p> <p>The detailed operational Flood Plan [REP3-015] sets out the response to restriction or cease of operation of trains on the track depending on flood warnings and alerts, and also the hierarchy of evacuation procedures for stranded trains.</p> <p>As part of ongoing discussions with the Applicant, BCC has requested that this Flood Plan [REP3-015] is expanded, or a similar document is provided, to encompass flood emergency / evacuation plans and procedures for the Clanage Road depot during operation. This document should outline how personnel can be safely evacuated during or in advance of a flood event occurring, should that be necessary.</p> <p>Requirement 5 (3)(g) 'Construction Environmental Management Plan etc.' of the Draft Development Consent Order [AS-014] requires the submission of a construction flood plan and flood emergency preparedness plan. BCC is satisfied that emergency flood procedures can be sufficiently controlled by information submitted pursuant to Requirement 5, and the Environment Agency would be consulted as part of the discharge of Requirement process.</p> <p><b>North Somerset Council:</b></p> <p>i) The operational flood plan referred to in REP3-015 is in large measure based on existing Network Rail (NR) Standards and Procedures which have been practiced and refined over time and which will be implemented once the DC scheme is adopted as part of the rail network. NSC will be involved in the wider multi-agency response to a major emergency involving flooding as this would be likely to be part of a much larger flood event rather than being confined to the rail system with NR being primary responder on the network through implementing its response. NR, together with NSC forms a part of a multi-agency response and is part of the Local Resilience Forum. Overall, we think the detailed operational flood plan has built comprehensively on the outline operational flood plan and would be fit for purpose for NSC and other services to anticipate, prepare and react effectively and in a coordinated manner to a given situation.</p>	<p>The Applicant proposes amendments to requirement 31 of the dDCO (Doc: 3.1, version 6), submitted at Deadline 6, and amendments to the CEMP, which will be submitted as soon as possible after deadline 6, to make the site as resilient as practicable to flooding.</p>

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			<p>ii) It would be advisable to have a separate document, this means it can be updated independently from the other documentation, however combining this into a single Emergency and Evacuation Plan including flooding would be of benefit.</p> <p>iii) See above</p>	
<b>HE Historic Environment</b>				
HE.2.1	<i>Clanage Road</i> <b>Historic England</b>	<p>In your SoCG [REP1-020] you raised concerns with the designs for the Clanage Road construction compound and requested a number of photomontages from various vantage points in order to be able to assess the effect of the proposal on a number of local heritage assets including the Clifton Suspension Bridge and Ashton Court Gate. The Applicant advised that this would be a temporary construction compound that would not be permanently lit and as a result the matter is marked as agreed.</p> <p>However, this is incorrect whilst there would be a larger temporary compound during construction (Work No 26A) there would also be a permanent vehicular access, ramp, flood mitigation works and railway maintenance compound of 2,984 sqm (Work No 26) in this location. Given these works would be permanent are you still satisfied that the proposed works would not harm the setting of any of the identified heritage assets and that the matter remains agreed? If you do have outstanding concerns can you please advise what these are, what additional information (if any) would be required to assess these affects and/ or what mitigation would be required and how this could be secured.</p>	<p><b>Historic England:</b></p> <p>No response submitted</p>	The Applicant has no further comment.
HE.2.2	<i>Clanage Road</i> <b>Historic England</b> <b>Bristol City Council</b>	<p>Do you have any comments on the points raised in REP1-041 with particular reference to the concerns raised regarding the views from Clifton Observatory?</p> <p><i>In answering this question, you may wish to look at the Applicants response to these comments [REP2-032]</i></p>	<p><b>Bristol City Council:</b></p> <p>The arrow within the image in the representation [REP1-041] indicates that the proposed Clanage Road depot would be located much further south, roughly where the 'City Mazes Escape Room' and the Bedminster Cricket Club are situated.</p> <p>The compound would be located further north and would appear much closer to the tree line beneath the arrow within the representation [REP1-041]. As a result, from</p>	The Applicant has no further comment.

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p>that view, the proposed Clanage Road depot would be largely concealed by trees.</p> <p>As set out within BCC's Local Impact Report [REP1-032], it is considered by BCC that the proposal to screen the Clanage Road depot with soft landscaping would further reduce the visual impact of the depot and no objections are raised.</p> <p><b>Historic England:</b></p> <p>No response submitted</p>	
HE.2.3	<i>Clanage Road</i> <b>Historic England</b> <b>Bristol City Council</b>	<p>The EA has raised concerns [REP4-043] in relation to flooding at Clanage Road. A suggested solution would be that the welfare cabin and the materials would need to be stored off the ground.</p> <p>i) Would you have any concerns regarding such a solution?</p> <p>ii) Are you satisfied that the DCO as currently drafted would give you sufficient control over these elements if this solution to flooding concerns needed to be pursued?</p>	<p><b>Bristol City Council:</b></p> <p>Please see BCC's response to ExQ2 FRD.2.4.</p> <p><b>Historic England:</b></p> <p>No response submitted</p>	The Applicant has no further comment.
<b>NV Noise, Vibration and Light</b>				
NV.2.1	<i>M5 Underbridge and Underbridge at Royal Portbury Dock</i> <b>North Somerset District Council</b>	<p>In their Deadline 4 Responses [REP4-036 and REP4-063] Mr Ovel and Mr Berry have suggested the need for an acoustic barrier between the footpath and the track at the M5 underbridge and the Royal Portbury Dock road underbridge to protect users of the path from the noise of passing trains. Do you agree that such a barrier would be necessary, and if so how would it be secured and are there any standards it would need to meet?</p>	<p>The Applicant is not proposing an acoustic barrier. If noise becomes an issue then it will be open to Network Rail to terminate the licence to Sustrans for the use of the route under the M5.</p> <p><b>North Somerset Council:</b></p> <p>We don't consider that the area along the footpath could be considered a noise sensitive area, given the already high background noise from the M5. Given the limited number of train movements an hour along the track, the time taken for a full train to pass that point and the limited numbers of pedestrians using the path, we do not consider that this is essential.</p> <p>If, however, an acoustic fence is considered essential, we would require additional noise details to advise on the acoustic properties necessary.</p>	The Applicant considers that a noise barrier is not appropriate. If noise is an issue then the licence will cease and walkers and cyclists will be directed on to the improved bridleway network.
<b>TT Traffic and Transport</b>				

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
TT.2.2	<p><i>M5 Junction 19</i>  <b>North Somerset District Council</b>  <b>Bristol City Council</b></p>	<p>The draft DCO [REP3-005] includes a new requirement no. 30 relating to M5 Junction 19 following the SoCG with Highways England [REP1-019]. Could the Highway Authorities both confirm that they are satisfied with the wording of the requirement and if they have any further comments in relation to the M5 Junction 19.</p>	<p><b>Bristol City Council:</b></p> <p>Requirement 30 of the draft DCO [REP3-005] relates to Works Nos. 1 to 24A. Each of these works is located within North Somerset District and as such, BCC has no comments on the wording of this requirement.</p> <p>BCC is satisfied that construction traffic and travel impacts can be sufficiently mitigated by provision within Requirement 5 (4) and (5) of the Draft DCO.</p> <p><b>North Somerset Council:</b></p> <p>We are satisfied with the wording of requirement 30 and have no further comments to make.</p>	<p>The Applicant has no further comment.</p>
TT.2.3	<p><i>Work No 24 Chapel Pill Lane, Ham Green</i>  <b>The Applicant</b>  <b>North Somerset District Council</b></p>	<p>The emerging Abbots Leigh, Ham Green, Pill and Easton-in-Gordano Neighbourhood Plan [REP2-025] includes at page 16 (map 6) a plan of the Chapel Pill Lane area and labels the track alongside the proposed Improvement Area 2: Affordable Housing as Hay's Mays Lane PROW. It is not identified as such on sheet 8 of the Public Rights of Way Plans [APP-028].</p> <p>Additionally, Mr Tarr's DL4 response [REP4-056] at Appendix 1 includes an extract from a 2015 consultation document referring to the use of a bridleway to provide an emergency access route to Pill Tunnel.</p> <p>i) Confirm if the access referred to at [REP4-056] Appendix 1 is Hayes Mayes Lane</p> <p>ii) Clarify the correct name/ spelling of the lane.</p> <p>iii) Confirm if this is a bridleway or has some other access designation, and whether it is publicly accessible.</p> <p>iv) Provide details of the restrictive covenant referred to by Mr Tarr at point 5 of his response [REP4-056] and whether this has any impact on the access and compound proposals.</p> <p>v) Does the lane currently form an emergency or maintenance access route to the Pill Tunnel (for freight trains) – if so would it remain as such?</p>	<p><b>North Somerset Council:</b></p> <p>i) Yes</p> <p>ii) Hays Mays Lane</p> <p>iii) It is not a public right of way or adopted by highways. The old existing lane was adopted as part of the housing development (as public open space) and is currently an accessible pedestrian route, bollarded at the top of it.</p> <p>iv) We think this is for the applicant to answer.</p> <p>v) Defer to Network Rail to answer.</p>	<p>The Applicant refers to its submissions in REP5 – 028.</p>
TT.2.4	<p><i>Work No 28 &amp; Ashton Vale Road crossing</i></p>	<p>Table 4.1 of CTC Technical Note 3 (Response to 9.18 ExA.CWR.D3.V1 – Appendix 2 to Applicant's responses to Written</p>	<p><b>cTc:</b></p>	<p>The Applicant wrote to cTc on 24 February 2021. The Applicant asked:</p>

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
	<p><b>CTC on behalf of ETM Contractors Ltd and Manheim Auctions Ltd</b></p>	<p>Representations submitted at Deadline 2) [REP4-050] sets out the traffic movements to/ from Manheim on auction and non-auction days.</p> <p>vi) Is it correct that the number of staff movements to/ from the site are the same whether it is an auction day or not?</p> <p>vii) Confirm the days of the week that Manheim typically holds an auction, the regularity of such auctions, and the start/ finish times when customers typically arrive and leave the site (when not restricted by the Covid-19 pandemic).</p> <p>viii) Provide a similar table to show current traffic movements to/from ETM and their operating hours.</p>	<p>vi) Number of Staff Movements at Manheim</p> <p>It is correct that the number of Manheim staff on site is the same irrespective of whether or not there is an auction occurring on that day. There is a requirement to accept vehicle arrivals, collections, inspections, photography, process onto the website and moving vehicles within the Manheim site. Essentially, on days when auctions are not taking place, they are being planned, managed and prepared for, hence the same staff numbers attend every workday.</p> <p>vii) Typical Auction Days at Manheim</p> <p>Auctions take place typically 3 or 4 days per week. The numbers of auctions, attendees and days vary according to what kind of vehicle is being auctioned. There are regular sales, special vendor sales and Manufacturer sales. The latter takes place twice a month, typically on a Wednesday, with other auction kinds taking place Monday, Tuesday and Thursday. Friday is usually reserved for processing and managing the sales program.</p> <p>Typically, auctions commence at around 10:00 AM, with attendees arriving typically from 8:30 onwards to view the vehicles prior to the auction commencing. Auctions typically conclude anywhere between 2:00 and 4:00 PM with vehicles being collected afterwards, once payment and associated paperwork has been completed, resulting in buyers leaving with their purchased vehicles typically between 3:30 and 5:30PM.</p> <p>Typical auction sales sizes comprise;</p> <ul style="list-style-type: none"> <li>• On a Monday – in excess of 600 vehicles for sale;</li> <li>• On a Tuesday – around 350 vehicles for sale; and,</li> <li>• On a Thursday – in excess of 600 vehicles for sale.</li> </ul> <p>Special and Manufacturer sale (generally Wednesday) sizes vary significantly between the values quoted above for other days of the week.</p> <p>The above clearly illustrates the importance of ensuring that any survey data to be employed in modelling the sole access to the Ashton Vale Industrial Estate was collected on a day of a large Manheim auction. Not to do so risks significantly understating the level of traffic demand, as is apparent from the data utilised in the Paramics and Linsig models. The variation in flows has been acknowledged by the Applicant with reference to the later ATC surveys, however, the data used as input</p>	<p>"The Examining Authority's Further written questions (ExQ2) [PD-014] asked cTc for clarification and further information related to data presented in its Deadline 4 Submission [REP4-050]. In particular, this requested clarification of traffic demand data quoted for Manheim auctions, and to provide similar information for ETM. Your response is included in a letter to the Examining Authority dated 16<sup>th</sup> February 2021 [REP5-044].</p> <p>This notes that: <i>"Typically, on a weekday, ETM sees of the order of 3,500 lorry loads deposited at the site, representing around 7,000 vehicle movements (arrivals plus departures). In addition, processed product leaving the site can total up to around 600 lorry loads per weekday, making 1,200 vehicle movements, hence a total of up to 8,200 lorry movements per day...."</i></p> <p>The letter goes on to set the present day figures alongside historic data, noting that: <i>"...in May 2017, ETM weighbridge records confirm typical inbound product receipts totalling under 2,200 lorry loads per day and outbound processed product loads of under 400 per day; confirming an increase of over 56% in ETM lorry demand from the date of the NSC surveys to current."</i> [This suggests a daily total of 5,200 two-way movements in 2017]</p> <p>The Applicant would like some clarification regarding these figures.</p> <p>In the first instance, all of the Applicant's traffic count data analysed for Ashton Vale Road / Winterstoke Road junction (in Part 2 of Appendix N to the TA [APP-172]) indicates that total two-way traffic into and out of Ashton Vale Road is in the range 3,300-3,700 vehicles over 24-hrs (and 3,000-3,200 in 12-hrs between 6am and 6pm), for all movements to all premises on Ashton Vale Road. This is substantially fewer than the totals quoted in your figures for just your client ETM. Furthermore these count figures include all traffic, of which HGVs account for 15%-20% of the totals, proportions that are consistently observed across all of the classified counts.</p> <p>In addition, it is difficult to see how the figures you quoted reconcile with ETM's site usage. For instance, in the 'Notice of Decision' for planning application 17/06938/F dated 17<sup>th</sup> August 2018 (<a href="https://pa.bristol.gov.uk/online-">https://pa.bristol.gov.uk/online-</a></p>

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			<p>to the model has not been adjusted to reflect the busier days. This clearly results in a substantial underestimation of traffic demand and associated congestion and delay at the access junction.</p> <p>viii) ETM Traffic Demand</p> <p>Although the request from the Inspectors requested "...a similar table..." to that previously submitted for Manheim, the volumes of vehicle movements associated with ETM are sufficiently large and variable as to require consideration in context to ETM's activities over recent years. I have therefore provided the information below, however, rather than in a table of figures, I provide the context to each value quoted. My intention is to prevent the values in as clear and unambiguous a format as possible and I trust that this is acceptable to the Inspectors.</p> <p>Typically, on a weekday, ETM sees of the order of 3,500 lorry loads deposited at the site, representing around 7,000 vehicle movements (arrivals plus departures). In addition, processed product leaving the site can total up to around 600 lorry loads per weekday, making 1,200 vehicle movements, hence a total of up to 8,200 lorry movements per day. Arrivals typically start at around 6:30 AM and continue until 5:00 PM, with weighed departures typically starting around 5:00 AM and continuing to around 4:30 PM.</p> <p>cTc has obtained historic weighbridge records from ETM in order to compare current operation of the site with that which has taken place previously and this has been used to identify how lorry movements generated by the company have grown since the NSC surveys were undertaken. In May 2017, ETM weighbridge records confirm typical inbound product receipts totalling under 2,200 lorry loads per day and outbound processed product loads of under 400 per day; confirming an increase of over 56% in ETM lorry demand from the date of the NSC surveys to current. This comprised an annual increase 2017 to 2018 of some 9%, representing expected organic growth of the ETM business. The substantial change between 2018 and 2020, where lorry movements increased by some 44% reflected the return on ETM's multi-million pound investment in new processing plant.</p> <p>A review of ETM weighbridge data therefore confirms that the reliance of NSC's modellers on data collected on</p>	<p><a href="https://www.recyclingbristol.com/waste-transfer-centre/">applications/files/933D896C68CABFC85ADE6DBC0E29B72A/pdf/17_06938_F-GRANTED-1890338.pdf</a>), a number of conditions are specified by Bristol City Council, including 'Post occupation management' condition 13 ("No more than 150 000 tonnes of waste shall be processed at the site per annum") and 14 ("Hours of operation Monday – Saturday. No operations of waste transfer, sorting and deliveries entering or exiting the site as set out within this application submission shall take place outside the hours of 06.00 to 18.00 Monday to Saturday"). These conditions imply that around 500 tonnes per day can be processed in a 6-day week, a figure confirmed by ETM's website (<a href="https://www.recyclingbristol.com/waste-transfer-centre/">https://www.recyclingbristol.com/waste-transfer-centre/</a>).</p> <p>The amount of waste carried by individual vehicles will clearly vary, so 50 vehicle movements would be generated in each direction if payloads are on average 10 tonnes per vehicle (100 movements per day two-way), or up to 100 movements (200 two-way) with individual payloads of 5 tonnes. This is consistent with traffic counts provided by the Applicant, given that there are other businesses in the Ashton Vale Road industrial estate that also generate HGV movements. Your figures would suggest a level of movements significantly in excess of this.</p> <p>The Applicant would be grateful if cTc could confirm if the information provided to the Examining Authority is correct, or update the figures if an error has arisen. I have not yet copied this email to the Examining authority but expect that this email and your response will be provided to the ExA before next week's hearings."</p> <p>Clarification in response to the Applicant's letter of 24<sup>th</sup> February 2021 was received from cTc on 26<sup>th</sup> February 2021 [AS-063]. This prompted a request by the Applicant for further clarification, sent to cTc on 2<sup>nd</sup> March 2021 [AS-066].</p> <p>A subsequent reply was received from cTc on 3<sup>rd</sup> March 2021 [which is not yet referenced in the Examination documents library], and the matter was discussed at ISH5. The Applicant relies on its further submissions made prior to and at ISH5, and in its subsequent summary of the oral case: Doc ref 9.45 ExA.FI.D6.V1.</p>

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p>9th May 2017 clearly understates existing ETM traffic demand very significantly.</p> <p>cTc is also aware of an imminent Planning Application by ETM, on which a formal Pre- Application submission has been made to the Environment Agency (EPR/EP3794SH/V003) and which will see their firm increase its hours of operation such that its processing machinery would be permitted to run 24 hours per day. Whilst it is envisaged that trucks would not run 24 hours per day and that waste would be stockpiled on site during the day in order to provide sufficient product for the processing to continue throughout the night, the number of vehicle loads delivered each day would clearly increase, generating additional vehicle movements during similar times of day in comparison with the current operation, which is itself generating considerably higher demand than surveyed and allowed for in the NSC models.</p> <p><u>Agent of Change</u></p> <p>The position promoted by cTc and SPLS on behalf of our joint clients relies on the principle of the Agent of Change being responsible for addressing impact caused. As a further illustration of this principle, I attach a copy of a recent Planning Appeal Decision (APP/H5960/W/20/3246208), dated 14th January 2021, by Government Inspector Helen O'Connor LLB MA MRTPI. In this case the Inspector dismisses the Appeal given that the site location is inappropriate for provision of residential development on the grounds that the adjacent site is a protected employment location.</p> <p>The premise is that the location is and has historically been an important employment site and it is inappropriate to introduce residential use in close proximity to a protected use, which could impact on future living conditions for residents of the proposed development. This could lead to future conflicts of interest between the environment (predominantly noise) created by the current and historic employment use and its impact on living conditions within the proposed adjacent residential use. The dismissal of the Appeal accepted that the Agent of Change in that instance was the proposed residential use and that it could not be permitted to impact upon the adjacent site of acknowledged employment importance, which took precedence.</p> <p>Similar considerations apply to the proposed implementation of the MetroWest scheme in that its</p>	

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p>increased frequency of closure of the level crossing would inevitably impact on the accessibility of the adjacent acknowledged important employment site. cTc's previous representations demonstrated substantial inadequacies in the submitted traffic modelling which have not been addressed. Consequently, no weight can be given to the Applicant's unsupported claims that the minor proposed mitigation will adequately address the inevitable traffic impact of the proposals.</p> <p>The employment use is important to the City and is precedent, hence the Agent of Change should be required to clearly demonstrate that any material impact is satisfactorily addressed. As discussed at length in my previous submissions, the Applicant's submissions fall woefully short of such an essential demonstration of mitigation of the inevitable traffic impact of the proposal.</p> <p>Conclusion</p> <p>The additional information requested by PINS, to be presented at Deadline 5 has added further confirmation to the conclusions previously reached by cTc in reviewing the submitted traffic models; that they substantially underestimate the level of traffic demand associated with the Ashton Vale Industrial Estate. No traffic growth has been applied to the Ashton Vale Road traffic and, whilst this is common practise in traffic forecasting, it fails to allow for any organic growth of the businesses within the Estate.</p> <p>The preliminary investigation above into the profile of traffic growth of ETM deliveries and collections has identified an annual organic growth of the order of some 9% and there is no reason to conclude that other businesses within the estate can be expected to grow any slower than ETM. Consequently, a basic level of traffic growth reflecting development of the businesses within the estate should have been assumed in compiling the model. It is entirely right and proper for employers based in a designated important employment location to expect to be able to develop their businesses according to demand and without undue impediment. No such growth has been allowed for in the traffic modelling submitted by the Applicant, whose promoted scheme represents the Agent of Change and in the absence of reliable evidence to the contrary, can reasonably be expected to harm the accessibility of the businesses within the Estate.</p>	

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p>The clear consequence of this is that the models do not reflect the current operating conditions seen by employees and employers of the estate, hence cannot be relied upon to accurately forecast future operational conditions, or impact.</p> <p>This was identified in cTc's original submission, three years ago, as a failing and yet, rather than collecting appropriate data and reconstructing the model's Origin-Destination matrices, the Applicant has repeatedly sought to justify continued reliance on inappropriate, unrepresentative data, by "validating" the model using further data which cTc has demonstrated to be itself highly suspect at best and, more realistically, wholly unrepresentative. To "validate" a traffic model against unrepresentative, hence invalid data is a highly inappropriate methodology, which in fact serves to raise more questions than it answers in regard to the model.</p> <p>The models on which the Applicant seeks to rely are clearly unrepresentative, invalid and hence unreliable. In the absence of appropriate origin-destination data collected at a representative time, when Winterstoke Road was not subject to roadworks at or near its junction with Ashton Vale Road, no reliance can be placed on the output of either the VISSIM, or Linsig models submitted. Instead and in light of the considerable traffic delays already experienced at times at this location, the only conclusion which can be reached is that additional closures of the level crossing are likely to result in traffic impact which is substantial and hence in the terms of Paragraph 109 of the NPPF, Planning Permission should be refused.</p> <p>It is unfortunate that this issue has not been taken seriously by the Applicant, despite cTc's submission on behalf of the occupiers of Ashton Gate Industrial Estate clearly identifying 3 years ago the endemic faults within the model and suggesting a way forward, which could have made the modelling more reliant. At present and in light of the information provided in support of the DCO Application it can only be concluded that the scheme as proposed is likely to result in substantial deleterious impact on the access and accessibility of an important employment site, which will significantly harm employers based within, including nullifying the benefit of substantial financial investments in recent years.</p> <p>In addition and further to my previous submissions, cTc has become aware of other companies resident in the Ashton Gate Industrial Estate whose Directors are</p>	

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p>expressing extreme concern over the proposal to increase the frequency of closure of the level crossing. Attached is further correspondence, which, although not specifically requested by PINS at this stage, adds further to the evidence previously submitted and I respectfully request that these concerns are considered fully in regard to the proposals and their impact on the accessibility of our clients' premises in this important employment location.</p> <p>We look forward to an opportunity to discuss the above further, however, I remain extremely concerned that the model on which the Applicant continues to rely is clearly and demonstrably inappropriate and unfit for purpose. In the absence of collection of and reliance on more appropriate traffic data I am concerned that it is not possible to reach a positive conclusion on the basis of the invalid traffic models submitted and on which the Applicant seeks to rely.</p> <p>Two appendices attached, see:  <a href="https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR040011/TR040011-001180-carl%20TONKS%20consulting%20on%20behalf%20of%20ETM%20Contractors%20Ltd%20and%20Manheim%20Auctions%20Ltd.pdf">https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR040011/TR040011-001180-carl%20TONKS%20consulting%20on%20behalf%20of%20ETM%20Contractors%20Ltd%20and%20Manheim%20Auctions%20Ltd.pdf</a></p>	
TT.2.5	<p><i>Work No 28 &amp; Ashton Vale Road crossing</i>  <b>Bristol City Council</b></p>	<p>Provide comment on the submissions by CTC and Sutherland Property and Legal Services (SPLS) [REP4-050], in particular regarding:</p> <p>ix) The recent and future expansion of existing businesses around Ashton Vale Road and whether this 'stress testing' should be accounted for in the TA; and</p> <p>x) The 'Agent of Change' and fallback position of increased use of the railway line by freight trains.</p>	<p><b>Bristol City Council:</b></p> <p>As outlined within BCC's Local Impact Report [REP1-032], BCC is satisfied with the Applicant's approach to traffic modelling at Winterstoke Road and Ashton Junction and the mitigation proposed by the Applicant.</p> <p>The methodology for the traffic modelling undertaken to inform the Applicant's Transport Assessment was agreed with BCC's Traffic Signals team and as such, the model is acceptable.</p> <p>The submissions by Sutherland Property &amp; Legal Services on behalf of ETM Contractors Ltd and Manheim Auctions Ltd ('the representations') appear to rely on a limited set of data rather than the full scope of surveys which were undertaken by the Applicant by both Manual Classified Counts and Automatic Traffic Counts. These surveys were largely consistent in terms of volumes and patterns and again are considered acceptable to BCC.</p>	<p>The Applicant relies on its further submissions made at ISH5 and in its subsequent summary of oral case – Doc 9.45 ExA.FI.D6.V1.</p>

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			<p>The representations outline that the temporary roadworks on Winterstoke Road would invalidate the surveys undertaken due to the unavailability of the left turn lane into the Ashton Vale Estate. The assumption within the representations is contrary to BCC's understanding given the range of surveys undertaken across several years both with and without the temporary roadworks, and the fact that the traffic volumes going into and out of the Ashton Vale Estate would be unlikely to change significantly due to the roadworks as there is no alternate route for traffic (Ashton Vale Road is the only way to access to the Estate).</p> <p>On the subject of sensitivity testing or stress testing, the approach undertaken by the Applicant and the use of a Vissim model would account peaks such as the auction programme. This approach is in accordance with the Department for Transport's 'Transport analysis guidance' (TAG). The auction peak would also not coincide with the typical PM traffic peak and as such, the effect of these events on the modelling would not be significant.</p> <p>The MOVA control upgrade proposed by the Applicant would help to address any peaks, such as those encountered at auction events or at the AM or PM traffic peaks. This form of mitigation is considered acceptable to BCC.</p> <p>With regard to the 'Agent of Change' principle, whilst this is typically associated with pollution-generating uses, the principles could be applied to the situation at the Ashton Vale Estate.</p> <p>Firstly, para. 182 of the NPPF states that existing business should not have unreasonable restrictions placed on them by development. As the railway line and the level crossing are already in existence, the element of change would be the frequency of closures associated with an increase in the use of the line.</p> <p>The transport modelling, which has been agreed with BCC, does not indicate that the junction would function any worse than existing and as such, it is not considered that any 'unreasonable restrictions' would be placed on the businesses within the Ashton Vale Estate.</p> <p>The second element of para. 182 requires the provision of 'suitable mitigation' to respond to the agent of change. The mitigation proposed, in the form of the upgrade to</p>	

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
			the MOVA system and the increase in the length of the left turn lane onto Ashton Vale Road, is considered acceptable by BCC.	
TT.2.6	<p><i>Cala Trading Estate &amp; Ashton Vale Road crossing</i></p> <p><b>BNP Paribas Real Estate on behalf of the London Pensions Fund Authority</b></p>	Provide your further comments following review of the Applicant's oral case and response to action points at ISH2 [REP4-009 and REP4-021] in relation to the Ashton Vale Road industrial area/ Cala trading estate.	<p><b>BNP Paribas Real Estate on behalf of the London Pensions Fund Authority:</b></p> <p>We have reviewed the Applicant's oral case and responses to action points at ISH2 [REP4-009 and REP4-021] in relation to the Cala Trading Estate which is owned by our client, LPPI Real Estate Fund. Whilst we acknowledge the responses provided by the Applicant, we feel there is still no clear indication as to how long the barriers could be down for each train passing through the crossing. We note from the Applicant's response that the same timing assumptions were used for both passenger and freight trains in the traffic signal modelling. The Applicant then provides further information advising the passenger trains could range from 46 m to 115 m in length depending on whether it is a 2, 3 or 5 carriage formation but a freight train could potentially be up to 700m in length, so potentially 6 times longer than the longest passenger train proposed.</p> <p>The potential impact of more frequent and extended barrier down time on the ability to access and leave Cala Trading Estate and Ashton Vale Road increases the risk of vehicles trying to 'beat' the barriers leading to damage and accidents.</p> <p>Our client has concerns around the potential impact on the value of their asset as when and if units in the estate become vacant, difficulties accessing/egressing the site may impact on potential tenants' decision making when considering whether or not to occupy one of the units leading to potentially longer void periods and the impact on rental income.</p> <p>In summary, the concerns raised in previous correspondence therefore remain and further clarification is required regarding barrier downtime and the impact this will have on the ability to access and leave Ashton Vale Road as well as our client's property.</p>	The Applicant has modelled 2 mins 5 seconds closure time, assumed for both passenger and freight trains and based on an average freight train movement. Passenger trains will be shorter and as a result barriers may be raised approximately 15 seconds sooner than for an average freight train.
TT.2.7	<p><i>Works Nos 15, 16 and 18</i></p> <p><b>The Applicant North Somerset District Council</b></p>	In their Deadline 4 response [REP4-058] the BPC state that they do not accept that their land is needed for the provision of Public Rights of Way (PRoW) given that there existing available alternatives. Do you agree and if not, why not?	<p><b>North Somerset Council:</b></p> <p>We consider that the first part of question is for applicant to comment.</p> <p>We have no issues with work No 16 remaining a permissive route. We also agree Work No 18 should be</p>	The Applicant notes the position of the local planning authority.

ExQ2	Question to:	Question	ExQ2 response	Applicant's response to ExQ2 response
		Regardless of the above, BPC indicate that they would be happy to allow the execution of Work Nos 15, 16 and 18 subject to work No 16 remaining a permissive route rather than a public footpath and that Work No 18 should be maintained by NSDC. Do you agree?	maintained by North Somerset District Council. The route at Work No 18 could be dedicated by BPC as a Public Bridleway under section 25 of the Highways Act 1980.	

Deadline 5 submissions

Ref. no	Action for:	Action	Deadline 5 response	Applicant's response to Deadline 5 response
001181-D5-001	<b>Bristol City Council</b>	ISH2 Action Point 17:  BCC to provide an assessment of the effect of the fencing proposed for the Clanage Road depot on the adjoining Conservation Area at Deadline 5.	On reviewing its operational requirements, Network Rail has confirmed paladin fencing can be used instead of palisade and the Applicant has agreed this amendment. BCC supports this revision to the fencing proposal and is satisfied that as a result there would be no unacceptable harm to the character of the Conservation Area. Sufficient control is retained by BCC via Requirement 4 to ensure that this change is secured.  The above statement is recorded in the Applicant's SoCG with BCC, to be submitted at Deadline 5.	The Applicant has amended the dDCO at deadline 6 – Requirement 31 now includes the requirement for paladin fencing to be used (see Doc: 3.1, version 6).
001181-D5-002		ISH2 Action Point 24:  BCC to review their comments on the Winterstoke Road/ Ashton Road junction in light of the response received from Mr Tonks at Deadline 4.	See attached response to ExQ2.	The Applicant relies on its further submissions made at ISH5 and in its subsequent summary of oral case – Doc: 9.45 ExA.FI.D6.V1.
001181-D5-003		ISh3 Action Point 6:  To submit completed SoCG's agreed with Bristol City Council (BCC).	An updated SoCG is to be submitted by the Applicant at Deadline 5.	The Applicant hopes that the SoCG will be signed and submitted in advance of, or at, Deadline 7.
001185-D5-001	<b>Highways England</b>	Re: The Examining Authority's written questions and requests for information (ExQ2).	We have reviewed the Examining Authority's written questions and requests for information (ExQ2) (Issued 26 January 2021) in respect of the application by North Somerset Council for Portishead Branch Line – MetroWest Phase 1. We have noted that there are no specific questions asked of Highways England in the round of questions.  As noted in my email 20 November 2020, Highways England has remained in frequent dialogue with the Council since their application for MetroWest Phase 1 was submitted. We have a signed Statement of Common Ground with the Council [REP1-019] confirming that subject to a number of Requirements, Highways England is now satisfied that the proposed development is unlikely to result in a severe or unacceptable safety impact on the Strategic Road Network as the	The Applicant has no further comment.

			construction phase of the scheme could be safely managed throughout its temporary period by a number of proactive management measures. The Requirements are listed in the new Schedule 2 Part 1 Requirement No. 30.	
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**Comments by First Corporate Shipping Limited trading as The Bristol Port Company (BPC) on information and submissions made by other parties at deadline 4**

Examination library reference	Document	The Applicant's position at Deadline 4	BPC's comment	Applicant's response to BPC's comment
<b>The Port's internal access track leading from Marsh Lane towards the M5</b>				
REP4-020	Applicant's responses to written representations received at Deadline 3, relating to BPC's comments on Applicant's ExQ1 response, lines BPC-D3-001 and BPC-D3-005	The Applicant states its proposed rights over and use of the access track will not be incompatible with the rights of others who presently enjoy it or its use by the Port.	<p>BPC suggests that it is still not possible for BPC or the ExA to be confident that this is the case. There is no information in the DCO application documents which details the intended traffic flows over the track specifically or considers how these flows might relate to use by others. No information at all has been provided about the proposed use of the track by RRVs during construction. BPC is also aware of submissions being made to the examination that traffic movements related to the Lodway Farm compound currently proposed to pass through Pill should be diverted instead to use the Port's access track.</p> <p>Further, the Applicant suggests that its appointed contractor will ultimately determine the use of the Lodway Farm compound. This clearly implies that the Applicant accepts that it is that contractor which will decide the nature and intensity of use of the track, regardless of any assessments that may have been made by the Applicant. The Applicant states that "<i>it will work with BPC and the other users of the track to enable all parties to continue to use the route</i>" but offers no enforceable mechanism to achieve this.</p>	<p>The Applicant will continue to discuss the mechanism for working with other parties using the Port's access track and in this regard has met with NGET recently.</p> <p>The Applicant can, if agreement with the relevant parties is not reached, confirm the position by reference to Article 28(6) of the dDCO to the relevant parties. The Applicant deliberately sought a new right over the perimeter access track to demonstrate that it only seeks a right of access and does not seek to control other parties' use of the access, as it would be able to if it had sought the freehold of the relevant land.</p>

Examination library reference	Document	The Applicant's position at Deadline 4	BPC's comment	Applicant's response to BPC's comment
REP4-020	Applicant's responses to written representations received at Deadline 3, relating to BPC's comments on Applicant's ExQ1 response, lines BPC-D3-001 and BPC-D3-005	The Applicant states that it would comply with BPC's reasonable security requirements.	<p>BPC's concern is that the use of the track by significant volumes of construction traffic <i>of itself</i> creates a heightened security risk for the Port, regardless of whether it is, in practice, possible to ensure compliance with particular security requirements by a large number of third party haulage contractors. The creation of the proposed haul road over the track, including that part connecting the Port's track to the Lodway Farm compound, will enable significant numbers of large vehicles readily to have access very close to the Port's security fences in a way that would not otherwise be the case.</p> <p>The issue will be exacerbated if:</p> <ul style="list-style-type: none"> <li>• any of the vegetation protecting those fences is removed, which removal must therefore be prohibited; and/or</li> <li>• the area over which the DCO authorises temporary possession extends, as is proposed by the Applicant, beyond the current borders of the track and up to the security fence line. Elsewhere (see Applicant's oral case and response to representations at ISH2, line 51) the Applicant refers to the track being only single width. The Applicant has therefore not explained or justified why any land beyond the current track should be subject to powers of temporary possession.</li> </ul>	
REP4-009	Applicant's oral case and response to representations at ISH2, lines 46 and 55	The Applicant considers there is no valid justification for it to be obliged to surface the access track.	<p>The current condition of the track is wholly unsuitable for frequent HGV use, let alone along with use by large numbers of private cars and other light vehicles in connection with the DCO scheme. Part of it has no hard surface at all but even where a surface exists the 'surfaced' area is narrow and the quality of surfacing not designed for frequent, heavy vehicular use.</p> <p>The apparent extent and type of surfacing currently on the track is not the only issue. Whether tarmacadam or unbound-granular material, the issue is the depth of construction and thus suitability for the traffic loading. Use of the track for regular, heavy, construction traffic requires a proper road construction with compacted layers of suitable material that might comprise capping material, subbase, base course and wearing course.</p>	The Applicant relies on its submissions and subsequent summary of oral case at ISH 5, item 35 (Doc: 9.45 ExA.FI.D6.V1).

Examination library reference	Document	The Applicant's position at Deadline 4	BPC's comment	Applicant's response to BPC's comment
			<p>Some reinforcement might be appropriate.</p> <p>The current condition of the track is adequate to accommodate the current, normal use of it, which is by cars, 4-by-4 vehicles and light goods vehicles, with only occasional HGV use, but if the additional use proposed by the Applicant is permitted unless appropriate works are carried out the condition of the track will rapidly deteriorate, which will affect the use of the track by all others who presently require its use.</p> <p>Further, unless a suitable surface is laid on the track, the frequent HGV movements proposed across it will cause dust and grit to be mobilised and damage the vehicles in the adjacent storage compounds. The Applicant notes (at line 46) the conclusion of the Air Quality Assessment that there will be a medium to high risk of dust soiling in this area and suggests dust suppression measures that should be adopted by way of mitigation.</p> <p>The car companies which use the storage compounds require that their vehicles are presented to their customers in perfect, factory- finished condition. Dust deposits may contain materials that rust or react aggressively with the vehicle's bodywork, meaning that works to clean any vehicles which have been affected by dust can be exacting and expensive, potentially involving complete resprays. Dust can also infiltrate sensitive internal parts of vehicles. BPC's interests will not therefore be protected by the implementation of a generic dust management scheme.</p> <p>BPC notes the Applicant's suggestions as to dust mitigation measures that might be adopted and its suggestion that the implementation of those measures should be a matter for agreement between the Applicant, Network Rail and the local planning authority. Such an arrangement would not be adequate to ensure BPC's interests are protected. BPC disagrees that using Type 1 aggregate on the Marsh Lane track would be adequate: this material itself contains dust and its use will only exacerbate the problem even with constant maintenance. To avoid unacceptable adverse effects on BPC, specific mitigation measures are required, which must include the retention of the existing barrier</p>	

Examination library reference	Document	The Applicant's position at Deadline 4	BPC's comment	Applicant's response to BPC's comment
			<p>vegetation and the provision of a sealed surface to the track. Sealing the track should also reduce the need for the other mitigation measures suggested by the Applicant.</p>	
REP4-020	<p>Applicant's responses to written representations received at Deadline 3, relating to BPC's comments on Applicant's ExQ1 response, line BPC-D3-005</p>	<p>The Applicant considers that use of the access track as proposed would not cause any serious detriment to the Port's operations or that protective provisions are required.</p>	<p>BPC's concerns outlined above demonstrate the detriment that would be caused to its undertaking and operations if uncontrolled use of the track were permitted, including risks to the security of the storage compounds at the Port, damage to cargo from dust and other airborne particles and other port operations being impeded because of traffic on the track and its condition.</p> <p>BPC therefore repeats its view that in order to ensure use of the track is properly controlled, so that its use is not incompatible with the rights of others or its use by the Port as stated by the Applicant, protective provisions are required as set out in BPC-D3-005.</p>	<p>The Applicant does not believe that the port's Protective provisions are required and Article 28 of the Order provides the mechanism by which the Applicant can demonstrate it will not seek to use the access track in a way incompatible with the use of the access track by others.</p>
<b>Closure of the Court House Farm at grade crossing</b>				
REP4-020	<p>Applicant's responses to written representations received at Deadline 3 relating to BPC's comments on Applicant's ExQ1 response, line BPC-D3-006</p>	<p>The Applicant considers that it is not required and would be inappropriate for the DCO to provide for time constraints on the Port's use of the at grade/flat crossing at Court House Farm which would be in addition to or conflict with those in the existing easement, and that matters raised by BPC which relate to the terms of the existing easement are for negotiation between Network Rail and BPC.</p>	<p>BPC's position is as set out in its comments on the Applicant's responses to ExQ1 submitted at deadline 3 (examination library reference REP3-046) in relation to question CA.1.10. BPC is continuing its dialogue with Network Rail in relation to the key timing issue identified in those comments, but as yet it has not been possible to reach any resolution of them.</p> <p>BPC believes that the Applicant's position confuses two distinct aspects of the DCO, being on the one hand the works comprised in the DCO scheme itself and the impacts of their construction and use and on the other how land interests necessary for the implementation of the scheme are to be secured (including the extent of any necessary powers of compulsory acquisition).</p> <p>The closure, in fact, of the current at grade crossing is clearly a direct result and impact of the Applicant's implementation of its desired DCO scheme, and one that will in the absence of alternative provision cause serious detriment to BPC's statutory undertaking. That effect must therefore be mitigated as part of the DCO scheme in the normal way. Since this impact of the DCO scheme was foreseen, it was possible for some advance preparation to take place (in the form of BPC's planning application for a bridge) to assist in enabling mitigation to</p>	<p>The Applicant deliberately drafted the dDCO so that the Court House Farm crossing is not dealt with by powers under the Order. The reason for this is that the position as regards the crossing is covered by the terms of the existing legal agreement between Network Rail and BPC and regulated by the relevant planning permission. The Agreement between Network Rail and BPC was entered into by the parties on 4 September 2017 in contemplation of the Applicant's proposed application for development consent and so includes a provision for termination which was specifically included, and accepted by BPC, to cater for Metrowest. It is not necessary or appropriate for the Order to deal with matters that are sufficiently dealt with by way of commercial agreement freely entered in to by the relevant parties, both knowing of the Applicant's proposed application for development consent and also adequately dealt with by planning permission issued by the local planning authority.</p>

Examination library reference	Document	The Applicant's position at Deadline 4	BPC's comment	Applicant's response to BPC's comment
			<p>be delivered if and when required. However, for that mitigation to be effective, BPC must also be allowed adequate time within the DCO works timetable to construct the bridge.</p> <p>The DCO therefore needs to make provision to enable this. This is the case regardless of the position in respect of proprietary rights relating to the crossing and whether any powers of compulsory acquisition are needed. As explained in its previous submissions, BPC has been willing to progress discussions with Network Rail with a view to securing satisfactory arrangements for construction of the bridge. However, it cannot accept as part of those arrangements that it should be compelled to incur the cost of this alternative provision before it is clear that such an alternative provision is actually required. Unless and until a satisfactory and legally binding agreement is reached with Network Rail, BPC's position remains that the draft DCO sought by the Applicant will require amendment to ensure the necessary mitigation can be secured and BPC is given adequate time to construct an alternative crossing once it is clear that alternative is needed.</p>	
<b>Blockades and possessions of the freight line during construction of the DCO scheme</b>				
<b>REP4-020</b>	Applicant's responses to written representations received at Deadline 3, relating to BPC's comments on Applicant's ExQ1 response, line BPC-D3-002	The Applicant considers that securing blockades and possessions is a matter adequately covered by the Railways Act and Network Rail licences, and not something the DCO should cover.	<p>BPC disagrees. The deprivation of access to the rail network for BPC's statutory undertaking will be a direct adverse result and impact of the construction of the proposed DCO development. This impact must be assessed as part of the overall assessment of the scheme's impacts before the DCO can be made and, just as is the case with any other adverse impact, provision must be made by the undertaker for mitigating that impact as part of the DCO scheme which it is promoting.</p> <p>The impact will be created by the undertaker, as developer of the DCO scheme, requesting access to the track to undertake the relevant works in accordance with its chosen programme, a request to which Network Rail (NR), in pursuance of its statutory functions, will agree or otherwise. BPC does not seek to control the exercise of NR's functions in that respect, but only the actions of the undertaker in relation to the programming of its works. This programming must take into account BPC's needs in relation to continued freight access and those parts of</p>	The Applicant refers to its submissions in REP5-028 at CI 2.3.

Examination library reference	Document	The Applicant's position at Deadline 4	BPC's comment	Applicant's response to BPC's comment
			<p>it that would necessitate blockades and possessions which will prevent BPC accessing the rail network must be agreed with BPC before any arrangements are discussed with NR in the exercise of its statutory functions.</p> <p>The Applicant's previous responses on this topic recognised the need for negotiation with BPC in order to avoid there being any unacceptable impacts on BPC during construction. The need for agreement with BPC about possessions was also acknowledged in the Construction Strategy (doc 5.4, library reference APP-074). This notes (section 2.3) that "<i>weekday and weekend disruptive possession access</i>" will be needed on the POD line, which possessions will clearly have a detrimental effect on the operation of the Port and BPC's statutory undertaking because of the effect it will have on port and cargo operations: see further BPC's response at deadline 5 to the ExA's further written questions and requests for information. This will be the case regardless of what may be discussed between FOCs and NR pursuant to the Railways Act or otherwise. The Construction Strategy therefore recognised that activities such as the realignment of the track at Pill (section 7.6) would need to be "<i>carried out in agreement with the Port Authorities</i>". Similarly in section 8.13 dealing with track work in the Avon Gorge, it is stated that the relevant work could be carried out "<i>.....either day time or night time, subject to agreement with the Port Authorities regarding freight movements and agreed possessions.</i>"</p> <p>This approach is then reflected in the Environmental Statement (Chapter 4: Description of the Proposed Works – doc 6.7, library reference APP-099, paras 4.5.247 and 4.5.248) in relation to all works affecting the track currently used by freight services where it is stated again that the works could be carried out "<i>either day time or night-time, subject to agreement with the Bristol Port Company and freight operating companies regarding freight movements and agreed possessions.</i>"</p> <p>The Applicant's assessment of the effects of the scheme therefore included an assumption that BPC's agreement would be obtained to possessions and blockades in order to mitigate impacts on BPC. That assumed mitigation measure must therefore be secured as part of</p>	

Examination library reference	Document	The Applicant's position at Deadline 4	BPC's comment	Applicant's response to BPC's comment
			<p>the scheme. Unless adequately mitigated, the imposition of blockades and possessions will detrimentally affect the operation of</p> <p>BPC's statutory undertaking, so the controls necessary by way of mitigation are properly the subject of protective provisions.</p>	
		The Applicant states that document 9.23 ExA.ISH2.D4.V1 further deals with this topic.	The document referred to (Applicant's oral case and response to representations at ISH2, line 36) does not deal with arrangements for the timing of blockades and possessions.	The Applicant refers to its submissions in REP5-028 at CI 2.3.
<b>Ecology</b>				
REP4-020	Applicant's responses to written representations received at Deadline 3, relating to BPC's comments on Applicant's ExQ1 response, line BPC-D3-004	The Applicant does not agree that provisions to ensure that the authorised development is implemented in compliance with BPC's Ecological Management Plans should be included in the DCO.	Section 48A of the Harbours Act 1964 imposes a statutory duty on all harbour authorities to have regard to and take into account, among other things, the conservation of flora, fauna and geological or physiographical features of special interest when formulating or considering any proposals relating to their statutory functions. BPC's Ecological Management Plans form part of its discharge of these duties. It is therefore both necessary and reasonable that the implementation of the Applicant's proposals so far as they affect BPC's land should be in accordance with these Plans, and that this requirement, affecting as it does the discharge by a statutory undertaker of its functions, is secured by protective provisions.	<p>The Applicant's response in REP4-020 is that 'The Applicant will work with BPC in relation to the impacts, if any, on the wetland and saltmarsh area to the east of the M5 near Pill, but sees no reason for this to be secured in the dDCO, including in protective provisions'.</p> <p>The impact on the Area East of the M5 in BPC's Ecological Management Plan (which is also Field east of M5 Motorway, Lodway North Somerset Wildlife Site) has been assessed [ES Chapter 9, AS-031, paragraph 9.6.15]. The work will comprise a 3 m wide bridleway with fence [Work number 18, REP5-004] which will lead to a permanent loss of approximately 394 m<sup>2</sup> of poor semi-improved grassland and marshy grassland habitat. The habitat surrounding the bridleway will be replanted with grassland and the magnitude of impact is minor and significance of effect is slight adverse.</p> <p>Temporary indirect impacts from construction, noise, dust and vibration will be managed as detailed in the Master CEMP Ver. 02 [AS-046]. Paragraph 3.8.1 includes reinstatement of all temporary working areas. The CEMP will be secured by DCO Requirement 5.</p>
<b>Use of BPC's railway</b>				
REP4-020	Applicant's responses to	The Applicant believes that its	The plots cited comprise BPC's private railway. Schedule	The Applicant does not believe that the protective

Examination library reference	Document	The Applicant's position at Deadline 4	BPC's comment	Applicant's response to BPC's comment
	written representations received at Deadline 3, relating to BPC's comments on Applicant's ExQ1 response, line BPC-D3-007	<p>proposed acquisition by compulsion of rights over BPC's railway (and associated access) on the terms set out in schedule 10 of the draft DCO (affecting plots 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55) will not cause serious detriment to BPC's statutory undertaking</p>	<p>10 of the draft DCO provides for the compulsory acquisition of rights over the railway and sets out the terms of the rights sought, those terms differing between three different parts of the route. However, so far as access for rail vehicles are concerned, each of the proposed rights is drafted in the widest possible terms which would permit the beneficiary of the rights to have access for its rail vehicles over BPC's railway as frequently as it desired, at any and all times of the day and night and without any notice to BPC.</p> <p>It is patently the case that the existence and exercise of a wholly uncontrolled right of that type over BPC's railway would cause serious detriment to BPC's statutory undertaking.</p> <p>To date, the Applicant has been unable to provide further detail of what it would propose as to the manner in which the rights might actually be exercised. It has therefore not been possible to determine whether limitations and controls might be imposed on the rights which might enable them to be exercised without causing serious detriment.</p> <p>Therefore, BPC's position remains that the DCO should not be made containing the powers of compulsory acquisition of rights on the terms set out in schedule 10 and that accordingly protective provisions must be included as suggested in paragraph 6.2 of BPC's written representation to enable the exercise of the powers properly to be controlled.</p>	<p>provisions proposed by BPC should be included in the Order. The new rights would only be exercised when a possession or blockade is proposed on Network Rail's railway and as a result would not cause serious detriment to BPC's statutory undertaking as the relevant freight operating companies would have been notified by Network rail of the proposed possession and freight trains would not be accessing on to or from the national network on the branch line whilst the blockade or possession is in force.</p>
		<p>The Applicant considers that use of BPC's railway line by Network Rail is better dealt with through revisions to the BPC/Network Rail connection agreement or entry into a replacement connection agreement.</p>	<p>BPC does not understand this comment. Connection agreements are template forms of agreement which define and deal with the connection point between a private rail facility and the network and the infrastructure necessary to enable access over that connection. They do not provide rights for either party to use the wider railway infrastructure of the other.</p> <p>In any case, it is not appropriate for the Applicant to seek to justify its acquisition of extensive rights over BPC's railway on the basis that it is for BPC to negotiate with a third party (Network Rail) if it requires any limitations on those rights.</p>	<p>The Rights sought are for works for the benefit of the Port – the works to provide signalling and to provide a realigned connection to the national rail network; together with a right of access for maintenance of the national rail network to reduce network perturbation.</p> <p>The Applicant does not believe that the protective provisions proposed by BPC should be included in the Order. The Applicant will continue to discuss the issue with BPC and Network Rail.</p>

Examination library reference	Document	The Applicant's position at Deadline 4	BPC's comment	Applicant's response to BPC's comment
REP4-009	Applicant's oral case and response to representations at ISH2, line 36 and appendix 4	<p>In respect of the continuity of freight trains into the future the Applicant considers preserving freight paths is not best dealt with in the Order. This would be better dealt with under the existing arrangements through the Railway Act 1993.</p> <p>There is nothing in the draft Order that would restrict the use of the Branch line for the Port. There is a clear regime to deal with the number of train paths that are available to the Port.</p> <p>Access to the Portbury route will be subject to ORR regulation.</p>	<p>BPC has reviewed the information provided by the Applicant in Appendix 4 to the Applicant's oral case and response to representations at ISH2, but considers this does not affect the points made by BPC in its Response to action points 19 and 20 from ISH2 submitted at deadline 4 (REP4-060) and repeats its views in that response.</p> <p>BPC is pleased to note that the Applicant now agrees that the correct number of daily freight train movements permitted by the planning permission is 40, that is 20 trains arriving at RPD and 20 trains departing RPD each day, and not the lower numbers suggested by the Applicant and Network Rail at ISH2.</p> <p>As the officer's report in connection with the planning permission made clear, North Somerset Council agreed that this level of traffic (combined with the new, hourly restriction imposed by the planning permission) would not cause any problem for the MetroWest scheme and should work alongside it. BPC therefore finds it difficult to understand the Applicant's current reticence in accepting BPC's suggested protective provision, which seeks only to confirm that as between BPC and the Applicant such previously agreed level of traffic may indeed be maintained. The timetable information provided by the Applicant does not provide this assurance: it is only an extract and in any event there is nothing proposed in the DCO that would require that timetable to be adopted or maintained.</p>	<p>As was discussed at ISH 5 BPC's railway is not part of the national network and therefore the policies and processes concerning the national network do not apply to it. There is a clear and distinct difference between the two situations. There is no need for protective provisions to address the allocation of train paths therefore. The details of the Port's planning permission for the use of its railway are not relevant to the operation of the Network Code and BPC should not through protective provisions be afforded the opportunity to control the national rail network.</p>
REP4-021	Applicant's response to Examining Authority's Actions from ISH2, action point 19 an and appendix 1	<p>While the freight line remains a freight line only, planning permission 11/P/1893/F allows an upper limit of 20 freight trains per day into Royal Portbury Dock (RPD) and 20 freight trains out of RPD per day. When scheduled passenger services are reintroduced, an additional restriction limits freight trains to one per hour into RPD and one per hour out of RPD.</p> <p>The proposed infrastructure is sufficient to provide capacity for one freight train into RPD per hour and one freight train per hour out of RPD per hour alongside the proposed passenger service. The Applicant has provided a Working Train Timetable to BPC.</p>	<p>If (which BPC does not accept) the Applicant's position were correct, and all issues of train movements, timetabling and train paths affecting the freight and passenger services will adequately and properly be controlled through the Railways Act procedures, then it follows that the Applicant would also have to accept that the hourly restriction imposed by planning permission 11/P/1893/F and the peak hours restriction imposed by the s106 agreement dated 26 October 2000 (both of which were imposed purely to protect the operation of the future passenger service) were equally unnecessary and are therefore unenforceable. If the Applicant's</p>	

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			<p>current position were correct, Railways Act regulation would have ensured that appropriate access for the passenger service would always be available despite the operation of the freight service and no provision seeking to protect the future operation of the passenger service could or should have been included in either a planning permission or any related agreement.</p> <p>That those provisions were included in the development consent and related agreements relating to the rail link demonstrates that the protective provision now sought by BPC may and should be included in the DCO.</p>	
<b>Controlled crossing/central refuge on Royal Portbury Dock Road</b>				
<b>REP4-042</b>	North Somerset Council - Post Hearing Submission - Response to matters raised at the Issue Specific hearings 2 and 3, action point 29	The Council wished to explore the possibility of pedestrian operated traffic signals or a central refuge on Royal Portbury Dock Road.	BPC is aware that others have also suggested that user controlled traffic lights should be installed where the bridleway exits onto Royal Portbury Dock Road. However, BPC supports the Applicant's view that these measures would not be necessary or justified, on either a temporary or permanent basis. Visibility along the road is good with a 30mph speed restriction, making any form of assisted crossing at this point unnecessary. A splitter island (between the entry and exit roads) slightly further along the road towards the roundabout already provides a refuge for those wishing to cross. Further, Royal Portbury Dock Road is the key route for traffic to and from Royal Portbury Dock. Any kind of user controlled traffic signal would interrupt traffic flows and potentially cause traffic to block back from both roundabouts, resulting in congestion in the Port and towards the M5, which is what the roundabouts are designed to avoid. It was for this reason that in early discussions with the Applicant BPC opposed the introduction of such signals and that remains its position.	The Applicant notes BPC's position.
<b>Traffic on Marsh Lane</b>				
<b>REP4-063 &amp; REP4-037</b>	M Berry - Post Hearing Submission - Response to Action Points 29,30 and 15 of ISH 2  Bill Ovel on behalf of Pill & Easton-in-Gordano Parish Council - Post	Various measures are suggested in relation to the control of traffic on Marsh Lane, including speed restrictions, speed humps and partial closures.	Given its use in connection with traffic resorting to and from the Port, BPC would object to proposals to close any part of Marsh Lane or to introduce one-way working or speed humps. However, to the extent they are not already in place, BPC would be supportive of suitable speed reductions being implemented along the whole of Marsh Lane.	The Applicant notes BPC's position.

Examination library reference	Document	The Applicant's position at Deadline 4	BPC's comment	Applicant's response to BPC's comment
	Hearing Submission - Response to Agenda item 4 of ISH2			