



MetroWest+

Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.42 ExA.CAH2.D6.V1 – Applicant's Oral Case and response to Representations at Compulsory Acquisition Hearing 2 (CAH2)

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The proposed Portishead Branch Line (MetroWest Phase 1) Order

Applicant's Oral Case and response to Representations at the Compulsory Acquisition Hearing 2 (CAH2) held on 3 March 2021 at 10am

Document Reference: 9.42 ExA.CAH2.D6.V1

1. Introduction

- 1.1 The second Compulsory Acquisition Hearing (**CAH2**) for the Portishead Branch Line – MetroWest Phase 1 (**DCO**) application was held virtually on Microsoft Teams on Wednesday 3 March 2021 at 10am.
- 1.2 The Examining Authority (**ExA**) invited the Applicant to respond to matters raised at the Hearing but also in writing following the CAH. This document summarises the responses made at the CAH by the Applicant and also seeks to fully address the representations made by Affected Parties, Interested Parties and other parties attending.
- 1.3 The Applicant has responded to the topics raised by each of the attending parties in the order the ExA invited them to speak provided cross-references to the relevant application or examination documents in the text below. Where it assists the Applicant's responses, the Applicant has appended additional documentation to this response document as follows:

2. Submissions in response to matters raised at CAH2

Ref	Comment/ Representation by:	Questions/Issues Raised at the CAH	Applicant's Response at the CAH	Applicant's Written Response
1.		Review of CA Schedule information	-	See revised CA Schedule – Document 9.11ExA.CA.D6.V4

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2.	ExA	<p>Licences at Mount Pleasant and Eirene Terrace</p> <p>The ExA asked why licences have been used in relation to these properties, and why this approach has been taken?</p>	<p>The licences are proposed mainly for access and to provide a safety cordon should plant or material fall down from the embankment the railway is on, in to gardens below.</p> <p>A different approach has been taken with Sambourne Lane and some Hardwick Road properties as permanent rights are needed for the retention of ground strengthening works. At Lodway Close, the back gardens of those properties will only have temporary impacts but it is a longer term impact to install a haul road through back gardens of the relevant properties. This will be the only way to access from the Lodway compound to the works area at the bridge between Avon Road and Lodway Close.</p> <p>The licences at Eirene Terrace and Mount Pleasant will be short-term and to detailed terms are to be finalised. It is likely that safety fencing and safety cordons will be installed. If the licence is sorted out in 2021 it might be too premature before the works actually start. In relation to the arrangements nearer to Pill Station, the Applicant believes it was more appropriate to deal with the licence post-consent.</p> <p>The parties appear in the Book of Reference so if the licences are not secured, the land will be subject to compulsory acquisition powers.</p>	<p>The Applicant has no further representation to make.</p>

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3.	ExA	<p>Babcock</p> <p>Representatives on behalf of Babcock have submitted a letter requested confirmation that Work No 27 has been withdrawn and if so they will withdraw their objection.</p>	<p>The Applicant stated that it will write to Babcock to confirm the deletion of Work No 27 from the dDCO.</p>	<p>The Applicant wrote to Babcock 12 March 2021.</p>
4.	ExA	<p>Freightliner</p> <p>ExA requested an update on the current position with Freightliner</p>	<p>The Applicant confirmed that it was not anticipating amending the DCO to include for flexibility as proposed by Freightliner.</p> <p>Freightliner contacted the Applicant the previous day to confirm that heads of terms have been agreed, and the option agreement with Network Rail is moving forward. The parties propose to enter into a short compromise agreement stating that when the agreement for lease is in place, the Applicant will not exercise its compulsory acquisition powers.</p> <p>The Applicant does not see any reason why the parties can't reach agreement prior to the end of the Examination.</p>	<p>The Applicant has now received Freightliner's proposals for a compromise agreement and anticipate this will be concluded before Deadline 7</p>
5.	ExA	<p>London Pension Fund/BNP Paribas</p> <p>In relation to Plot 16/155, the landowners were concerned that this plot appears to encroach onto land owned by them.</p>	<p>The Applicant will provide a response.</p>	<p>The Applicant believes that the Order Limits do not encroach on titles BL153134 and BL56479.</p> <p>Please see Applicant's responses to the Panel's Action points for CAH2, line 3 (Doc 9.46ExA.FI.D6.V1)</p>

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6.	ExA	<p>Anya Bigwood</p> <p>The CA Schedule notes that there was a meeting held with Mrs Bigwood. Is there a further update and will negotiations be resolved before the end of the Examination?</p>	<p>The Applicant believes that relevant agreements have been issued but proposed to take this away as an action point in order to confirm the position.</p>	<p>The Applicant issued engrossments to Mrs Bigwood and her solicitor in Mid February 2021. The Applicant is awaiting an update but is optimistic that agreement can be reached by the end of the Examination.</p>
7.	ExA	<p>Representations by Parties in the vicinity of Pill Viaduct</p> <p>Note that the core sampling works are to be provided and these works will be carried out in April 2021 because of delays. Will these agreements be completed before the end of the Examination.</p>	<p>The Applicant stated that it would be unwise to assume that agreements will be completed before the end of the Examination, but suspect that this would be the same regardless of whether the sampling works were delayed or not.</p> <p>Network Rail stated that the final agreements might be dependent on the exact methodology that the appointed contractor wants to use. As progress with the preferred bidder moves forward, a revised form of HoTs will need to be proposed to the Affected Parties to give appropriate assurances.</p>	<p>Entry for survey purposes is now intended to take place on 6 April 2021, but the Applicant is awaiting return of agreements from one of the Affected Parties. The Applicant believes the terms of the agreement are agreed.</p>
8.	ExA	<p>Stephen Bullock and Susan Freestone</p>	<p>The position in relation to plot 05/85 is that the land required is now smaller but permanent access rights are now required instead of the permanent acquisition. Access is required to a culvert that is</p>	<p>The Applicant hopes to send a draft easement to Mrs Freestone for consideration very shortly.</p>

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		<p>The ExA requested an update on the current position.</p> <p>Mrs Freestone confirmed that she is happy with the position on this and with the effort made by the parties. The parties are still in negotiation over which part of the land is required.</p>	<p>located under the railway and also for maintenance to Cattle Creep Bridge.</p> <p>Discussions are continuing with Mrs Freestone and the Applicant is hoping to reach agreement. The impact on Plot 05/85 is now less as a result of the decision on District Level Licencing. The Applicant still believes that there is a compelling case for access in relation to the culvert and the maintenance of the bridge.</p> <p>There is also a specific requirement dealing with Cattle Creep Bridge in the dDCO in relation to levels and head heights. The land plans have been amended so that the plot take is substantially reduced.</p> <p>The Applicant will issue a draft easement to Mrs Freestone.</p> <p>In relation to plots 05a/05 and 05/151 a technical note was issued to Mrs Freestone with 6 options. This has not yet been shared with PINS. WBD would need instructions from the Applicant as to whether this will be shared with PINS.</p> <p>The Applicant is not proposing to amend the BoR and/or the land plans further as we have a solution that, in expropriation terms, works and this will be dealt with by agreement.</p> <p>The area shown is an area the Applicant believes there is a public interest for the compulsory acquisition of. The orientation and hectarage of the</p>	

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			area may change. This is the Applicant's backstop but we will look for flexibility, as the activities would not require works, but need compulsory acquisition powers are needed. It is not propose that less land is taken but it might be different land that is taken.	
9.	ExA	<p>Colin Crossman</p> <p>Will an agreement be reached on the issues with Mr Crossman? Is there a timetable for this?</p>	The Applicant is trying to reach an agreement and a proposal has been prepared recently for Mr Crossman. There has been good engagement at agent level. The Applicant hopes to make good progress by the end of the Examination.	The Applicant will continue to negotiate with Mr Crossman.
10.	ExA	<p>Mrs Jane Fear (on behalf of Mr Lee (deceased))</p> <p>ExA asked for an update on the current position.</p>	The Applicant stated that HoTs were circulated in January and a response is awaited. Further communications have taken place between the agents but the Applicant does not think there will be an agreement over the line by the end of the examination – there is a less than 50% chance of this happening.	The Applicant has no further comments.
11.	ExA	<p>Alvis Family</p> <p>Since the last hearing, a further objection has been received from the Alves family. What is the current position?</p>	<p>The Applicant stated that it was not clear if the objection is to the compulsory acquisition of the land held by the Alves family but the Applicant is taking a precautionary approach to this.</p> <p>The Applicant does not agree with the suggestion of an alternative route. This would result in a material change which is not needed as there are no</p>	The Applicant has now received revised documents (Option, Lease, and two Easements) from the Affected Party which are in an acceptable form. The Applicant is in the process of finalising the Option Agreement for engrossment.

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			<p>environmental effects or no need for compulsory acquisition or temporary possession.</p> <p>Heads of Terms were signed in January 2020. Solicitors continue to progress the position but there is no further update beyond this. An update can be provided for D6.</p> <p>The likelihood of the agreement completing will depend on whether the Alvis Family continue to pursue the position that there is an alternative. If agreement can't be reached then this will be a situation where the Applicant has to rely on CA powers.</p>	
12.	<p>ExA</p>	<p>Mrs Stowers</p> <p>Mrs Stowers suggested that there was an alternative access route via the Methodist Church. This is not a clear objection to the Scheme but is treated as being so.</p> <p>What is the current position here?</p>	<p>The Applicant stated that correspondence was received very recently (the previous afternoon) so haven't had chance to digest this.</p> <p>The Applicant is looking at the other suggestions put to it by Mrs Stowers but the opportunities to get to the gardens on Eirene Terrace are few in number, and the Applicant has taken the approach that it needs to have the option for all of those potential routes (given that there are so few). It's not an either/or scenario for access – both accesses need to be available.</p> <p>These works are to do with the soil nails and it is likely that these will be covered by a licence.</p> <p>As the Applicant understands it the gardens are below the level of the railway and the Applicant</p>	<p>An alternative access via the Methodist Church adjacent to Mrs Stowers' property is challenging due to it being enclosed by stone walls and the boundary with Mrs Stowers' garden is also buttressed by a substantial stone raised bed which may also serve a structural role in supporting the wall. The working space is also constrained toward the rear of the Methodist Church.</p> <p>However, the Applicant has carefully considered the comments from Mrs Stowers and is in the process of engaging with the Methodist Church with the proposal to access through its property - and on a temporary basis remove the stone wall and raised bed - so as to form a level access into Mrs Stowers' garden and provide more working space.</p>

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			wants to ensure that nothing topples down from the railway. The accesses themselves should be limited in nature.	The Applicant will speak with Mrs Stowers and with the Methodist Church to see if this approach can be taken forward.
13.	ExA	<p>Bimcorp</p> <p>What is the current position? Queries raised in relation to flooding and whether if the depot is within the operational floodplain, would temporary storage be necessary?</p>	<p>Detailed discussions are occurring and the Applicant is hopeful of securing agreement, though it is not likely that this will be in place before the end of the Examination.</p> <p>The area of both the temporary and permanent compound could not be reduced. The area required is based on what Network Rail need to turn their vehicles. This is what informs the space that is required. Network Rail vehicles need to be able to enter and exit in forward gear. The flood area is a minor consideration, taking the levels down and incorporating this into the design.</p> <p>Network Rail confirmed that vehicles are to enter a site cab first and leave cab first, and this is related to one of the requirements by Bristol City Council highways department. Part of the site goes up to the heart of the track. Network Rail need to be able to have storage on a temporary basis and can't compromise any further on the size of the compound area.</p>	The Applicant has no further representations to add.
14.	ExA	The ExA stated that the test of compulsory acquisition is that all reasonable alternatives have been explored before compulsory acquisition powers are granted. One the basis of	The Applicant stated that in relation to the progress of negotiations, the Book of Reference and the Statement of Reasons, these will all be updated.	The Applicant is complying with the Secretary of State's "Guidance related to Procedures for the Compulsory Acquisition of Land" issued on 3 September 2013 ("CA Guidance").

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		<p>the evidence before the Panel, the ExA is concerned that this may not be the case. The majority is already owned but further information is needed.</p> <p>There are significant gaps in the CA Schedule, only 29 agreements have been exchanged which equals less than 20% of the landowners. The ExA stated that this is not good enough. There are six weeks to progress this. The Panel needs further evidence that when it reports to the Secretary of State that all reasonable alternatives have been explored.</p> <p>The ExA requested a detailed plan as to how this will be addressed.</p> <p>Schedule 2 of the Statement of Reasons needs to be updated or removed from the next iteration of the Statement of Reasons with a cross-reference to the updated CA Schedule.</p> <p>Given the length of time since the Application was submitted, the ExA requested confirmation that the Book of Reference would be updated prior to the end of the Examination.</p>	<p>In relation to the land interests, the Applicant wants to emphasise that it takes two sides to negotiate on agreements. The Applicant has been attempting to negotiate and is doing all it can to achieve this.</p> <p>In relation to the Statement of Reasons, this should have been picked up previously and will be updated at Deadline 6.</p> <p>In relation to the Book of Reference, all affected parties are listed in the Book of Reference and the Applicant has undertaken diligent enquiry. The Book of Reference has been refreshed previously. The intention is to carry out a further refresh so that the Book of Reference is as up to date as it can be for Deadline 7.</p>	<p>The Examining Authority's referred to "all reasonable alternatives" in paragraph 8 of the Guidance. This paragraph reads:</p> <p><i>"The Applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) <u>have been explored.</u>"</i></p> <p>The Applicant believes this does not mean that negotiations must have concluded, but that negotiations have been attempted and pursued.</p> <p>The Applicant can confirm that all principal landowners and occupiers within the Order lands and scheduled in the Book of Reference have been approached.</p> <p>30 % of the Order lands is owned by the Applicant or Network Rail.</p> <p>Prior to the Order being submitted, freehold acquisition (not options for acquisition) occurred for plots at:</p> <p>Quays Avenue, Portishead – 01/135</p> <p>Quays Avenue, Portishead – 01/160</p> <p>South of the railway at the site of Portishead Station 01/205</p>

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				<p>Pill Station car park- 06/240</p> <p>and</p> <p>No. 7 Station Road – 06/525</p> <p>There is no reason why these significant acquisitions should not be included in any assessment of the Applicant's attempts at negotiation.</p> <p>Agreement with the Forestry Commission is about to be concluded.</p> <p>In addition Heads of Terms are about to be concluded with the owners of 03/30 and for the interest in land sought from the Alvis Brothers. Terms have also been agreed with Freightliner Limited.</p> <p>Close to Pill Station, agreements have been reached with a substantial proportion of owners and occupiers of lands where subsoil easements are required.</p> <p>Substantial negotiations have been conducted with a large number of parties and continue. This has been evidenced throughout the two CA Hearings by, for instance representations by Mr Crossman, Mrs Freestone, Bristol Port Company and National Trust.</p>

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				<p>In all the circumstances therefore, it is clear that the Applicant has complied with the provisions of paragraph 8 in that acquisition by private treaty has been explored with the majority of owners, lessees and occupiers of the Order lands.</p> <p>Paragraph 25 of the CA Guidance reads:</p> <p><i>"Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an Order granting development consent if attempts to acquire by agreement fail. Where proposals would entail the compulsory acquisition of many separate plots of land (such as for long linear schemes) it may not always be practicable to acquire by agreement each plot of land. Where this is the case, it is reasonable to include provision authorising compulsory acquisition covering all of the land at the outset."</i></p> <p>For reasons explained above and throughout CAH1 and CAH2, the Applicant is fully complying with paragraph 25 of the CA Guidance. It has, since 2008, been assembling land for the purposes of the scheme and has been successful in securing large areas of freehold land. Negotiations are being carried out with the vast majority, if not all, of the owners, lessees and occupiers of Order lands. Without compulsory acquisition powers the scheme will not proceed.</p>

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				<p>The Applicant is a local authority spending its ratepayers' funds and the funds provided to it by the Secretary of State. The sums it can pay to parties whose land will be acquired, whether by agreement or by compulsion, must be governed by the provisions of the Compensation Code – that is the combination of statute, case law and Lands Chamber decisions concerning the amounts that are appropriate to be paid in compensation following compulsory purchase. For many negotiations where terms are not yet agreed, this is because the relevant owner is looking for a level of compensation over and above that which the Applicant's professional advisers believe is appropriate under the Compensation Code. In such circumstances, were the Panel or the Secretary of State to require the Applicant to achieve a specified level of further acquisitions before the end of the examination (or some other point in time) this would effectively require the Applicant to pay "over the odds" to owners of the order land. This would be contrary to the Secretary of State's overall policy regarding compulsory acquisition compensation. See Paragraph 2 of "Guidance on Compulsory purchase process and The Criche Down Rules" issued by Communities and Local Government in October 2015:</p> <p><i>"When offering financial compensation for land in advance of a compulsory purchase order, public sector organisations should, as is the norm, consider value for money in terms of the Exchequer as a whole in order to avoid any repercussive cost"</i></p>

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				<p><i>impacts or pressures on both the scheme in question and other publicly-funded schemes."</i></p> <p>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/964686/CPO_guidance_-_with_2019_update.pdf</p> <p>Such an approach to compensation would also be in breach of the Applicant's fiduciary duties to its residents and businesses from whom it collects council tax and business rates.</p> <p>For all of the reasons stated above therefore the Applicant believes it is fully complying with the CA Guidance.</p> <p>The Applicant will continue to negotiate with owners and secure land or options over land wherever possible and on terms that can be justified under the Compensation Code.</p>
15.	ExA	<p>Crown Land - Section 135 Tests</p> <p>CA Schedule only lists Department for Environment, Food and Rural Affairs (DEFRA) and the Ministry of Defence (MoD) land but discussions are being held with Department for Transport (DfT) and Department of Health and Social Care (DHSC) as well.</p>	<p>The Applicant is talking to all four departments in order to secure section 135 consent.</p> <p>In relation to the DfT land there is no further update beyond what was submitted at Deadline 5. The Applicant will continue to seek to obtain the relevant Crown consent. The Applicant does not anticipate that this will be difficult to obtain.</p>	<p>Crown consent has now been provided by the DHSC.</p> <p>The Applicant has provided a further update on the status of the negotiations of the Crown consents in the CA Schedule (ref 9.51 ExA.CC.D6.V1)</p> <p>The Applicant continues to pursue the remaining S135 consents.</p>

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		<p>What is the latest position with those parties?</p> <p>If Crown Consent is not forthcoming prior to the end of the examination, the ExA will be expecting an explanation of the implications of this on the DCO Scheme.</p> <p>The ExA confirmed that there is no further action required in relation to the Escheat land.</p> <p>The ExA did ask the Applicant to confirm that, given the length of time since the application has been submitted, is the Applicant confident that there is no further escheat land within the order?</p>	<p>In relation to the land held by the DHSC, the position is that this consent is very close to achieving the consent.</p> <p>In relation to the land held by DEFRA, the Applicant's understanding is that the Crown Consent Heads of Terms with the Forestry Commission were agreed yesterday. The Forestry Commission is aware of the need for Crown Consent.</p> <p>In relation to the land held by the MoD, this is being dealt with by the MoDs in-house lawyers. This relates to land that was transferred to the Applicant but which included covenants in favour of the MoD. As a result of the covenants, Crown consent is still required.</p> <p>The MoD also has rights in relation to the following plots on sheet 1 of the land plans: 120, 125, 130, 135, 205, 235, 242, 245, 296, 298 and 305. The Applicant stated that these interests arise from an agreement some years ago with a developer. MoD consent is needed in relation to all of these plots. These are not included in the CA Schedule but this will be updated.</p> <p>Regarding Escheat land, the Applicant confirmed that it was confident there is no further Escheat land within the Order limits.</p>	
16.	ExA	Special Category Land – National Trust	The Applicant stated that discussions are ongoing and will continue.	The Applicant continues to discuss terms with National Trust but no further progress has been made. It is hoped a further meeting will take place

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		<p>The ExA asked for an update on the negotiations between the parties.</p> <p>The National Trust (NT) stated that it had received a proposal on 11 February from the Applicant. The NT did not provide a response at Deadline 5 as this was too close to receiving the proposal.</p> <p>The NT is supportive of sustainable transport schemes. The concerns of the NT relate to increased liability. The NT feels that it is unfair that the NT takes on future liability and responsibility for these works. The NT stated that it has counsel's advice that supports this view.</p> <p>The NT added that the land is required to support the scheme and that there should be ongoing maintenance and responsibility for the ongoing maintenance from the Applicant.</p> <p>NT feels that if NSC can agree on these points then an agreement can be reached.</p> <p>NT is pulling together a proposal that it would find acceptable to present to the Applicant. The NT stated that it is aware that the works in the Avon Gorge are required as part of the Scheme.</p>	<p>The difference of opinion between the parties is in relation to liability. The Applicant's position is that there is an existing operational railway already in place. The Applicant's proposals were designed to reduce the liability of NT by taking positive action to make the condition of the Avon Gorge rock face better than it currently is. The proposals remedy the current position.</p> <p>The Applicant notes what has been said by the NT. The Applicant stated that it seems that the parties are heading towards an impasse on this and that both parties have to put forward their legal case for the land to be included in the dDCO.</p> <p>The Applicant does not accept the position of the NT. The railway line is in place and has in existence since 1867. Until 1964 it carried passenger services.</p> <p>The Applicant stated that its position is that SPP is not invoked by the temporary possession of land. Compulsory acquisition and temporary possession of land are deliberately different.</p> <p>In relation to Quarry Bridge No 2, proposed alternative works to this bridge were included as part of the deal that was recently put forward by the Applicant.</p> <p>NT clarified to the Panel that should the revised bridge works happen, NT would be happier with the size of the compound. The applicant explained the larger compound (Work 25A) has to be pursued until such time as the NT agree to the revised scheme for</p>	<p>in the next week to 10 days. A further update will be provided at Deadline 7.</p> <p>The Applicant refers to S130 of the Planning Act 2008, which states (in part):</p> <p>(1) This section applies to land belonging to the National Trust which is held by the Trust inalienably.</p> <p>(2) An order granting development consent is subject to special parliamentary procedure, to the extent that the order authorises the compulsory acquisition of land to which this section applies, if the condition in subsection (3) is met.</p> <p>(3) The condition is that—</p> <p>(a) a representation has been made by the National Trust about the application for the order granting development consent before the completion of the examination of the application, [...]¹</p> <p>[(aa) the representation contains an objection to the compulsory acquisition of the land, and]¹</p> <p>(b) the [objection]² has not been withdrawn.</p> <p>The land of National Trust within Order limits is held inalienably by National Trust. At this time the condition in S130(3) would apply, subject to the</p>

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		<p>NT confirmed it has owned the land since 1964.</p> <p>The ExA queried if the red line would be reduced if the size of the compound is reduced?</p>	<p>Work No 25. Until the NT will allow the Applicant to provide an infill sleeve for the underbridge, the underbridge has to be reconstructed, necessitating a larger compound. The Applicant would like to reduce the size of the compound provide the infill sleeve to the bridge but can only do this if NT will allow it. The Applicant stated that it can't change its plans in relation Work No 25 and 25a, unless NT allow the Applicant to do so.</p>	<p>Applicant's contention in relation to the term "compulsory acquisition") as set out below.</p> <p>The Applicant contends that a power to enter on use land temporarily, with the land remaining with the existing owner does not amount to a compulsory acquisition and does not infringe on National Trust's holding of its land inalienably. No interest in land is acquired so the principle of inalienability cannot be infringed.</p> <p>A temporary power to enter on to land is best viewed as a statutory authorisation of what could otherwise amount to a trespass – in essence a statutory licence, subject to and regulated by the provisions in the relevant authorising Order.</p> <p>It does not amount to a compulsory acquisition of an interest in land therefore. No vesting declaration is made and no notice to treat is served (the two methods of commencing a compulsory acquisition). No interest in land is acquired and no title is taken from National Trust or is vested in the acquiring authority.</p> <p>The process set out in the dDCO (Article 33) is controlled by a notice process but simply provides for a lawful entry on to land in accordance with the provisions set out in the relevant article of the dDCO so as to provide the Applicant with a defence against an action in trespass and the landowner with a specific right to claim compensation.</p>

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				<p>The Applicant therefore continues to believe that S130 is not engaged, as no interest in land is being acquired by the Applicant from the National Trust. The Applicant accepts that if it is wrong on this point then the Order will need to be considered by the Secretary of State as requiring to be subject to the processes applicable to Orders that may be subject to Special Parliamentary Procedure.</p> <p>The Applicant will continue to endeavour to secure the consent of the National Trust to the inclusion of National Trust's land in the Order lands.</p> <p>In this context it is to be noted that the Applicant believes that the processes of:</p> <p>Vegetation stripping;</p> <p>Insertion of rock bolts; and</p> <p>Erection of catch fences,</p> <p>together with access over National Trust's land for those purposes, are activities for the benefit of National Trust, to reduce the potential risk of National Trust being liable for damage to Network Rail's existing railway caused by rock falls from National Trust's neighbouring land. The liability is an existing one, and the works on National Trust land would provide National Trust with installed works at no cost to National Trust.</p>

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17.	ExA	<p>Sections 127 and 138 Tests in relation to Statutory Undertakers</p> <p>Update on the position of negotiations with the statutory undertakers.</p> <p>The ExA stated the following:</p> <ul style="list-style-type: none"> • GTC – have not submitted a relevant rep or a written rep, so assuming that they are happy with the PPs. • Openreach – signed SoCG with Openreach. The signed SoCG includes an omission (para 3.1.5 – "completion of the works within [x] date"). This seems to differ from the answer given at ExWQ2 CA2.2 that Openreach will rely on the PPs. • Vodafone – no relevant representation or written representation were submitted, so the ExA is assuming there is no objection. • Virgin Media – wrote to PINS to confirm they had no objection. 	<p>The Applicant provided the following response in relation to the latest position with the statutory undertakers:</p> <ul style="list-style-type: none"> • Bristol Water – The Applicant is in discussions with BW. S127 is not engaged at this time. • CLH – the update remains as provided at Deadline 5. The Applicant is working to agree the outstanding matters with the Interested Party as soon as possible. The interactions between CLH and the Scheme are limited to an extant crossing under the disused railway and an are within the propose compound under the M5, to which an exclusion area will apply. The Applicant hopes that this agreement can be concluded before the end of the Examination. CLH has submitted a written representation and have requested their own form of Protective Provisions. • Openreach – the Applicant will look at the SoCG. There has been further consideration as to timings – so the SoCG may need updating. The SoCG deals mainly with a large cable that is part located within NR land on the disused railway. Openreach will have the benefit of the general electronic communications Protective Provisions for its apparatus in or on other Order land. • Wales and West – there are bespoke PPs within the dDCO. Negotiations are continuing. The Applicant will confirm the position at Deadline 6. 	<p>The Applicant will continue to negotiate with the relevant parties and will provide its full S127 case with remaining parties with relevant representations outstanding at Deadline 7.</p> <p>Un update on discussion with utilities, now also including Bristol Port Company, is provided below.</p>

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			<ul style="list-style-type: none"> • WPD – the Applicant prepared a SoCG which is with WPD. WPD said that they could not respond on this in time for Deadline 5. WPD will still maintain their objection. The Applicant spoke with WPD in the previous week. Correspondence and discussions continue between the parties. The Applicant is hopeful that there will be a resolution at the end of the Examination. WPD have provided their own PPs. There will either be an agreement in place or there will be different versions of the PPs provided by the parties. • Environment Agency – have included PPs in the dDCO. This is to be discussed in more detail tomorrow. • NGET – discussed later • Bristol Port Company – discussed later 	
18.	<p>National Grid Electricity Transmission (NGET)</p>	<p>NGET stated that a relevant rep was submitted as there are concerns over the interaction with the Hinkley Point C Connection Order 2016. Discussions have been held but not sufficient progress made.</p> <p>NGET have provided updated PPs to the Applicant.</p> <p>NGET has no objection in principle the proposed scheme. NGET is attending to ensure the protection of NGET's DCO.</p>	<p>The Applicant anticipates that the situation is fully capable of resolution. There are conflicts between the DCO Scheme and NGET's DCO in terms of the respective positions, and such crossings are very common. The appears no reason why the two schemes cannot live together.</p> <p>The Applicant stated that the project/NSC owns the principal land required for its own project whether the crossing occurs. In this scenario, a party is seeking CA powers over another person's land and in addition to impose restrictions over the dispossessed</p>	<p>The Applicant will continue to negotiate with NGET. It is hopeful that a conclusion can be reached before the close of the examination.</p> <p>The Applicant does not however accept the proposed protective provisions put forward by NGET. The Applicant submits the approach taken by NGET does not reflect the legal or physical position for the reasons set out below.</p> <p>The Applicant is working with Network Rail to provide alternative protective provisions, which it</p>

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		<p>NGET's interest in relation to the proposed scheme is statutory in nature, as it has the benefit of a DCO approved by the SOS. All powers required have been granted to NGET. As well as being fully consented the NGET/HPC scheme has commenced.</p> <p>NGET stated that whilst the apparatus will be placed within the plots, it is not currently in situ. NGET will have secured the necessary rights either by voluntary agreement or exercising its compulsory acquisition powers, by the time that a decision will have been made, expecting in October 2021.</p> <p>There will be 2 overhead lines installed in July to August 2023. NGET does not want to interfere with the scheme, but it wants to secure the PPs to benefit its own scheme and the HPC DCO.</p> <p>NGET stated that they require their PPs on the face of the order.</p> <p>In relation to the plots of land, an option agreement was exchanged in October 2015. This allows NGET to take an easement over the land.</p> <p>NGET has instructed its lawyers to prepare GVD notices. It has not been possible to exercise these GVDs yet as</p>	<p>parties additional terms – over land that the Applicant has acquired for the purpose of its own scheme.</p> <p>The purpose for the Applicant in acquiring rights over the land south of the disused railway, where HPCC holds an option, is to make sure that the HPCC DCO can continue to function. Under NGET's proposed protective provisions, the Applicant is being penalised for trying to help.</p> <p>There is no reason why there cannot be a mutual understanding between the parties. It is to be noted that discussions with WPD for the same location are progressing very well.</p> <p>What is being missed here by NGET is that the Applicant owns the land that it wishes to construct its project on. The Applicant accepts that its land to be subject to the rights in the HPCC Order and is not seeking to remove overhead or under railway line rights. Surface rights on the railway are an issue but the nearby Sheepway highway bridge provides a suitable alternative.</p> <p>In almost every other DCO situation where PPS protect utilities , the applicant does not own the land and apparatus is in situ within the land. Here the Applicant owns the land in question, and there is no apparatus. As a result HPCC is seeking to acquire the Applicant's ability to use its land unaffected land and modify the Applicant's recourse to the Compensation Code to limit its ownership further.</p>	<p>hopes to provide to NGET for comment shortly and will update the Panel at Deadline 7.</p> <p>S127 and S138 of the 2008 Act</p> <p>S127 of the 2008 Act reads (emphasis added)</p> <p>127 Statutory undertakers' land</p> <p>(1) This section applies in relation to land (“statutory undertakers' land”) if—</p> <p>(a) the land has been acquired by statutory undertakers for the purposes of their undertaking,</p> <p>(b) a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn, and</p> <p>(c) as a result of the representation the [Secretary of State]¹ is satisfied that—</p> <p>(i) the land is used for the purposes of carrying on the statutory undertakers' undertaking, or</p> <p>(ii) an interest in the land is held for those purposes.</p>

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		<p>the location of the towers is not yet settled. It is expected that the location of the towers will be settled soon.</p> <p>NGET submits that s127 applies here in that there is serious detriment to the statutory undertaker.</p> <p>NGET stated that the Applicant's position is that it does not believe that the relevant protection should not be in the PPs, the reason for which is that NGET doesn't have any interest in the land and that s127 not currently engaged</p> <p>However, where the option agreement has been exchanged the interest already exists. The position with regards to the option agreement, is that there is an equitable interest in the land in relation to the option.</p> <p>It is on NGET to rely on its compulsory acquisition powers or rights. There is a chance that these will be exercised prior to Oct 2021. Not a question of "if" the apparatus will be installed but when.</p> <p>The M52 J6 DCO, included PPs for HS2 even though HS2 has not acquired a land interest.</p>	<p>The Applicant is being penalised by NGET for acquiring land early in 2008. The Applicant wants to resolve this but the position needs to be looked at in this context.</p> <p>Regarding the point raised by NGET in relation to DCOs where there are non-statutory undertakers with PPs, this is no doubt dealt with on a case-by case basis. The PPs provided to the Applicant do not reflect the position here.</p> <p>The ExA queried that when the Grid DCO was considered, did MW make similar reps re PPs?</p> <p>The Applicant stated that this was discussed in the HPCC Examination. The Applicant did attend the examination and did ask for protection. When negotiations were not pursued to a conclusion, the Applicant asked for PPs but the suggestion was rejected by those promoting HPCC. The SoS agreed with HPCC and no protective provisions were included in the HPCC Order. The Applicant's recollection was that the decision from SoS for BEIS was that this issue would be dealt with in the MW Examination.</p> <p>The areas of issue for the Applicant are as follows:</p> <ul style="list-style-type: none"> The Applicant has not yet responded on HPCC's PPs as it feels there is no need for these. The Applicant can provide its own version of PPs if required. 	<p>(2) An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the [Secretary of State is satisfied of the matters set out in subsection (3)].2[...].2</p> <p>(3) The matters are that the nature and situation of the land are such that—</p> <p>(a) it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or</p> <p>(b) if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.</p> <p>(4) Subsections (2) and (3) do not apply in a case within subsection (5).</p> <p>(5) An order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the [Secretary of State is satisfied of the matters set out in subsection (6)].3[...].3</p> <p>(6) The matters are that the nature and situation of the land are such that—</p> <p>(a) the right can be purchased without serious detriment to the carrying on of the undertaking, or</p>

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		<p>In the event that s127 doesn't apply, NGET will still argue that it is entitled to PPs, on the following basis:</p> <ul style="list-style-type: none"> s127 and the engagement of the provision is not a re-requisite for the inclusion of PPs. NGET still takes the view that PPs should be included; HPC Connector DCO has already been granted by the SoS. <p>If the MW DCO has been granted, both parties will have powers in relation to the same parcels of land, it makes sense to regulate the position.</p> <p>There have been a number of DCOs that have been granted for the benefit of non-statutory undertakers. For example, the A303 Stonehenge – PPs were included for Esso on the face of the Order.</p> <p>NGET stated that it intended to submit a written summary of the case made today. The point that NGET is trying to make is that NGET has statutory powers to build and construct the HPCC. It is not a case of "if" but when. It is one</p>	<ul style="list-style-type: none"> The Applicant feels that s127 does not apply here as there is no land or apparatus of NGET to protect. These are NGET standard PPs but this is not a normal situation so standard PPs must not apply. These have previously been agreed in a different context and fundamentally different context to the existing situation. Para 5 of the PPs - by including rights in HPCC's DCO in the PPS, NGET is in effect providing by stealth a protection for NGET that it does not otherwise have. NGET could have, but has not, taken steps to vest its interest in the Applicant's land but by these words it is improving its position without giving the Applicant the protection of the Compensation Code. This is not an appropriate use of protective provisions in the order. Para 9 and 10 of the PPs - expenses and indemnities. NSC owns the freehold of the land. The practical effect of this is to reverse the compensation code. NGET seeks to penalise the Applicant for carrying out works on its own land over which it has powers. NGET want to be able to injunct the Applicant – to prevent the Applicant from carrying out its own works on its own land. The Applicant will be the freehold sooner and have its own Order to permit it to carry out works on its own land. It the 	<p>(b) any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.</p> <p>[...]4</p> <p>(8) In this section—</p> <p>“statutory undertakers” has the meaning given by section 8 of the Acquisition of Land Act 1981 (c. 67) and also includes the undertakers—</p> <p>(a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;</p> <p>(b) which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act).</p> <p>(9) In the application of this section to a statutory undertaker which is a health service body (as defined in section 60(7) of the National Health Service and Community Care Act 1990 (c. 19)), references to land acquired or available for acquisition by the statutory undertakers are to be construed as references to land acquired or available for acquisition by the Secretary of State for use or occupation by the body.</p>

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		<p>overhead line (correction). Construction of the whole scheme complete by 2025.</p> <p>NGETs acquisition of land rights is a separate matter. Can be discussed in more detail. That agreement and those land rights do not negate the need for PPs for critical infrastructure. It is standard in our view that PPs would be included on the face of the order.</p> <p>NGET stated that during the HPCC Examination, the ExA agreed with Grid that PPs were not required in the Order. The distinction is that NSC hadn't submitted an application and there were no powers granted. NGET does have powers for its own scheme and is constructing the scheme.</p>	<p>circumstances of this Application, such provision must be totally inappropriate.</p>	<p>The Applicant does not believe either S127 is engaged or , if it is engaged, that this is a situation where serious detriment arises.</p> <p>At this time NGET does not have an interest in most of the relevant Order land nor any Apparatus installed.</p> <p>The Applicant notes that NGET holds an option over the land comprising Shipway Gate Farm, east of the crossing of the railway by the highway known as Sheepway.</p> <p>The principal plots in the Applicant's land plans are:</p> <p>02/55 (freehold acquisition) and</p> <p>02/121 – new rights, being sought for the benefit of NGET and WPD.</p> <p>In addition, new rights are sought over plot 02/117 for access to maintain a culvert – this will not infringe on NGET's interests, and temporary powers are sought over a number of plots for access purposes.</p> <p>For both plot 02/55 and 022/121 the Applicant is seeking to secure interests in land for improvement of the owner's access and also to provide a new right to WPD and NGET to ensure that NGET and WPD do not require to serve notice on the Applicant to exercise new rights over plot 02/125, an accommodation crossing over the railway. The proposed acquisitions in effect constitute an</p>

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				<p>accommodation work for the benefit of parties, including NGET and WPD, and as a result should not be viewed as causing serious detriment to the carrying out of NGET's undertaking – the provisions are included for the benefit of the relevant undertakers.</p> <p>In relation to the land within Order limits that the Applicant already holds, in particular plots 02/25, 02/95, 02/96, 02/70, 02/125, the Applicant notes that whilst NGET have powers to acquire new rights over this land, only the powers of temporary use have to date been exercised. No interest in land has yet been acquired by NGET from the Applicant, despite such powers being available to NGET now for several years. The Applicant submits that a power to acquire land does not amount to an interest in land as mentioned in s127(1) and accordingly, even if s127 is engaged for Sheepway Gate Farm, the land held freehold by the Applicant should not be treated as land which is subject to s127 at this stage.</p> <p>North of the railway the Applicant seeks compulsory acquisition of plot 02/105 together with temporary powers over neighbouring plots such as 02/35, 02/36 and 02/37.</p> <p>The Applicant submits these works can be installed, and the relevant acquisition of 02/105 can take place without serious detriment to NGET's undertaking and also, on the basis that NGET does not yet have an interest in land in relation to the relevant plots, that s127 is not engaged.</p>

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				<p>The Applicant also has included for compulsory acquisition a number of highway plots comprising the highway of Sheepway. The Applicant has no intention of changing the status of the highway of Sheepway and again the Secretary of State can be satisfied that these plots can be included in the Order without serious detriment being created for NGET or WPD.</p> <p>The Applicant therefore submits that: (a) s127 is not engaged because NGET does not hold a sufficient interest in land or (b) to the extent that the option in land held over part of the Order lands (comprising Shipway Gate Farm) is found to be a sufficient interest in land to engage s127, no serious detriment will be caused by the Applicant's proposed acquisition – principally because the acquisitions proposed – are for the benefit of the HPCC Order purposes.</p> <p>In respect of s138 of the 2008 Act, the Applicant believes that this is not yet engaged. The provision relates to relevant rights or relevant apparatus.</p> <p>Relevant right is defined by s138(2) as "a right of way, or a right of laying down, erecting, continuing or maintaining apparatus on, under or over the land, which:</p> <p>(a) is vested in or belongs to statutory undertakers for the purpose of carrying out their undertaking</p> <p>Subsection 3 provides that relevant apparatus means "apparatus vested to or belonging to</p>

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				<p>statutory undertakers for the purposes of carrying on their undertaking".</p> <p>It is clear from the above that, in relation to s138, the land in question is not subject to any relevant right and there is no relevant apparatus within the Order land with such apparatus belonging to NGET.</p> <p>However, if Secretary of State disagrees with the Applicant and considers that S127 is engaged then the Applicant can provide amended protective provisions for the Secretary of State to consider and will do so in consultation with NR, prior to Deadline 7.</p> <p>Protective Provisions proposed by NGET</p> <p>The Applicant has the following comments on Protective Provisions proposed by NGET:</p> <ol style="list-style-type: none"> 1. Given the circumstances where: <ul style="list-style-type: none"> (a) no apparatus is yet installed and (b) the apparatus will be installed over land that is in the freehold ownership of the applicant <p>The imposition of the PPS suggested by NGET cannot be seen to be reasonable and are over-extensive in nature.</p>

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				<p>The Applicant notes in particular:</p> <p>Para 4. Apparatus of National Grid in stopped up streets - no NGET apparatus is installed in stopped up streets. The Applicant is not stopping up any streets to which this paragraph could apply in any event.</p> <p>Para 5 - Acquisition of land</p> <p>It is submitted by the Applicant that S127 does not apply. Para 5, by including the words:</p> <p>"including any rights contained in The National Grid (Hinkley Point C Connection Project) Order 2016"</p> <p>Seeks to put NGET in a better position than S127 provides for. It is unnecessary and in effect protects NGET more than the general law. NSC is very willing to work with NGET to deal with land matters. But it would expect and ask for an equal commitment from NGET. The position put forward by NGET is disproportionate.</p> <p>Para 6 – Removal of apparatus. The apparatus under the HPCC Order has not yet been installed. For it to be installed then NGET must, in part exercise powers over the Applicant's land. The Applicant's position should not be compromised both in terms of negotiating an agreement with NGET in advance of exercise of compulsory powers or potentially in the protections and even compensation it can secure under the HPCC order.</p>

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				<p>The same applies to Para 7.</p> <p>In all of this the Applicant fully believes that both parties can easily accommodate each other and such provisions as NGET propose are not necessary and adversely impact on the Applicant as landowner.</p> <p>Para 8 – Retained apparatus</p> <p>The Applicant is fully prepared to work with NGET to make sure the two schemes can be implemented and operated together. But what Para 8 is doing is to impose a long list of restrictions on how the Applicant can use its own land and which it acquired for a public purpose. It is submitted imposing such draconian restrictions on a landowner affected by the HPCC scheme is unfair and disproportionate. It amounts to the imposition of new rights and covenants on the Applicant's land without compensation.</p> <p>Para 9 – Expenses and Para 10 Indemnity</p> <p>The effect of these two provisions are that the Applicant would have to pay compensation to NGET for carrying out work on the Applicant's land and must also indemnify the NGET for carrying out work.</p> <p>The Applicant does not accept that this provision is reasonable.</p>

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				<p>Further, NGET looks to be able to injunct the Applicant from carrying out work on its own land and which, if the DCO is made, will be statutorily authorised.. The Applicant does not consider that this is fair or reasonable. The Applicant remains fully committed to working with NGET and no doubt there needs to be a risk apportionment, but the provisions proposed by NGET do not recognise the fact that the Applicant is having NGET's scheme imposed on its land, not the other way around.</p> <p>The remaining paragraphs would have more minor drafting comments but the general principles are largely acceptable.</p> <p>Conclusions</p> <p>The Applicant has for over 5 years been looking to reach agreement with and to co-operate with NGET based on a document issued by NGET. The Applicant remains very keen to reach agreement. But the terms NGET is seeking in the protective provisions proposed by them, are not reasonable and do not take any account of the fact that the Applicant is seeking to provide a much needed public transport facility to serve Portishead.</p> <p>The Applicant considers this imposition of additional controls – far in excess of what is required to enable NGET's scheme to be implemented safely - over the Applicant's land could not have been in the contemplation of the Secretary of State when the powers were given to NGET. Such restrictions were not mentioned</p>

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				<p>when the HPCC was being considered in Examination.</p> <p>NGET's proposed protective provisions, for apparatus and rights that do not yet exist, in effect reversing the compensation burden on the party having its land acquired (North Somerset Council), are not fair or reasonable. The provisions would place in serious jeopardy the ability of the Applicant to provide the MetroWest scheme for the benefit of the people of North Somerset.</p> <p>The Applicant will provide its own suggested protective provisions to NGET shortly and provide the Panel with an update at Deadline 7.</p>
19.	<p>Bristol Port Company (BPC)</p>	<p>Protective Provisions</p> <p>BPC stated that the parties had recently made some excellent progress with resolving matters, and with the engagement of Network Rail, which has filled out a lot of the areas. Network Rail has been able to assist with more detailed discussions about the use of the track along Marsh lane. Network Rail can provide detail on this. Hopefully will satisfy both parties on this.</p> <p>BPC is grateful for the PPs already in the DCO, which focus more on control over the works and thought these were</p>	<p>PPs are included in the dDCO. BPC has provided updated PPs which are being reviewed by the Applicant and Network Rail.</p> <p>The parties have had met, and another session is due to take place in a few days' time. The Applicants anticipates making good progress on the agreement, but the parties are currently a long way off regarding protective provisions.</p> <p>There are a couple of big points between the parties, that might be what stops an agreement being reached. All parties are coming to the table with an open mind.</p>	<p>The Applicant continues to believe the protective provisions it provided in the dDCO provide sufficient protection for BPC. Conversely those provided by BPC are over extensive and disproportionate and should not be included in the dDCO by the Secretary of State.</p>

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		<p>too narrow and needed to go further. Many of the powers follow the model form. The Port negotiated the form of PPs with Grid on HPCC. The PPs have to provide the full package.</p> <p>BPCs approach was to build upon those proposed by the Applicant, and include the PPs agreed with HPCC within this. For example, in relation to rights, and tempering compulsory acquisition and temporary possession powers.</p> <p>Agree with the Applicant that the parties should be able to make good progress. Acknowledge that there are difficulties to resolve. Can't say they will go away. But the key issues for the BPC, feel that we ought to be able to reach agreement and the parties desire to do so.</p>	<p>The Applicant agreed that BPCs update on the PPs reflects the current position.</p>	
20.	<p>Bristol Port Company (BPC)</p>	<p>Plots 05/101, 102, 130, 135, 136 – proposed extension to the bridleway under the M5</p> <p>BPC does not consider that all of the plots are needed for the extent of the works.</p> <p>Why is there a disjoint between what is required for works and is shown on the land plans?</p>	<p>The Applicant stated that the extent of the land was there to allow for flexibility in the event that the ground conditions mean that the path needs to move from where it is envisaged to be. The Applicant would prefer to have the area shown for wider flexibility in order to carry out the works in case ground conditions require it.</p> <p>It may be possible to define the width of the proposed bridleway and then allow for flexibility</p>	<p>The Applicant will continue to negotiate with BPC regarding a suitable deed of dedication for this work and is hopeful that a conclusion allowing for dedication rather than compulsory acquisition can be achieved.</p> <p>The Applicant repeats its view that, if a deed of dedication cannot be agreed by the parties, the acquisition of this land compulsorily for a public bridleway would not lead to serious detriment to</p>

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		<p>BPC stated that it would be concerned to have some level of control of the bridleway strip required and where this is located. If it were possible to narrow the corridor we may be able to find a level of agreement here. BPC confirmed that a narrower corridor would be more acceptable.</p> <p>BPC would be happy to dedicate the land as bridleway and accommodate the works, subject to caveats.</p> <p>BPC stated that provided that the PPs requested are included and that CA powers are not exercised without BPC consent then fine but could not accept CA of statutory undertakers land. Would create serious detriment and the power could be transferred to another party. Compulsory acquisition is to be last resort and it sounds like there is another option here.</p>	<p>within this. It may be better to deal with this by way of a dedication agreement.</p> <p>The Applicant believes that there is a compelling case for the land required for Work No 18. There is local precedent for the dedication, which seems sensible but until this agreed, the Applicant has to maintain the powers as included in the dDCO.</p> <p>The Applicant doesn't accept the serious detriment point here.</p> <p>The Applicant would suggest that the Port could operate its statutory function without this land.</p>	<p>BPC's undertaking. The Applicant will deal with its S127 submissions further at deadline 7.</p>
21.	<p>Bristol Port Company (BPC)</p>	<p>Plots 05/75 and 05/85</p> <p>In relation to these plots, BPC stated that the Schedule 10 rights go further than is required and would cause serious detriment.</p> <p>The form of the rights in Schedule 10 is undefined and that it is a right to access,</p>	<p>In relation to these plots the Applicant requires a continuous right of access for maintenance of Cattle Creep Bridge.</p> <p>In relation to the drafting of Schedule 10, this hasn't been revisited since Plot 05/85 has changed. The Applicant will have another look at this.</p>	<p>The Applicant has tracked a 7.5t Panel Van around the access point (in 05/75) and turning area (05/85) to set the parameters for the new right. The tracking provides for a margin within plot 05/75 to avoid conflict with roots and overhangs from the existing trees. The Applicant believes the route is of an appropriate width and dimension therefore.</p>

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		<p>pass or repass with plant or machinery and remain on the land.</p> <p>The use of this access and nature has changed but the Schedule 10 right is very broad and if exercised to its fullest without any restrictions, it will have a detrimental effect on the adjacent land that is to be developed for the storage of cargo. To understand the nature of the access is very important. Schedule 10 does not include any constraints. BPC are seeking to give better definition to what is required. Cattle Creep inspection and the access for the culvert. What kind of access is needed and how big is this to be? Trip looks to be disproportionately large for the maintenance access. BPC want this to be re-checked given the position has changed. It would reserve out an area that can't be developed.</p> <p>The entrance at Marsh Lane for the turning circle. BPC wants to understand the extent of the land required.</p>	<p>In relation to the width of the access, it is a route that hugs the fence line and tries to get to where it needs to end up with little impact as possible on the Port.</p> <p>Network Rail will consider and discuss the requirements for the type of vehicle access.</p> <p>The Applicant stated that it would be sensible for there to be similar forms of easement for BPC as for Mrs Freestone.</p> <p>In relation to plot 05/85, the additional triangle is to allow for vehicles to turn at the bridge. The Applicant and Network Rail will look into this in more detail.</p>	<p>The Applicant is discussing the detail of the route and the proposed easement with BPC. It hopes to issue draft deeds of easement to both BPC and Mrs Freestone shortly.</p> <p>The applicant has altered Schedule 10 of the dDCO to reflect a narrower description of the proposed easement. The entry now reads:</p> <p>To access, pass and repass and remain upon the land with or without vehicles, plant and machinery and for all purposes in connection with inspecting, reconstructing, maintaining, repairing, cleansing, clearing, refurbishing, replacing and removing</p> <p>(a) an accommodation bridge and associated walls, embankments and structures; and</p> <p>(b) a culvert, watercourse and head wall.</p>
22.	Bristol Port Company (BPC)	<p>Plots 05/30, 05/62, 05/65, 05/70</p> <p>BPC not listed in the BoR in relation to the plots – Plot 05/70 has been listed but the BoR does not include the others.</p>	<p>The Applicant stated that if the area is already highway then further acquisition of rights is not highway. If not highway then BPC can't use it's access rights over those plots.</p>	<p>The Applicant will write to BPC to confirm that the relevant accesses will not be closed and BPC will continue to be able to access the highway of Marsh Lane from its neighbouring land.</p>

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		<p>Access right is not specifically noted, unusually.</p> <p>If these areas are currently already highway then in relation to the bulge plots, then reason given for purchasing the freehold couldn't apply as the reason given isn't correct in the SoR.</p>	<p>BPC already has field entrances from opposite Court House Farm and access, to the north of the Railway, within part of plot 05/30.</p> <p>The Applicant stated that there is no intention to close any of the accesses to BPC land. Never the intention to do so.</p> <p>If the Applicant did stop the access there would be compensatable event but the Applicant has no intention to do this.</p> <p>If BPCs concern is in relation to Article 28 there is a mechanism in article 28(6) to provide notice or confirmation in relation to confirming that existing rights will not be extinguished.</p>	
23.	<p>Bristol Port Company (BPC)</p>	<p>BPC need to retain access for existing electronic communications operator. The ExA queried that given that dDCO contains PPs for electronic communications operators is this sufficient?</p> <p>BPC stated that this is in relation to a Code agreement that is being negotiated. BPC does not want the operator to have the option choose their own access. There needs to be a new access. The compound has been built to enable an access from Marsh Lane. The embankment is the relevant area.</p>	<p>The Applicant stated that the land plans have evolved and the parties did not anticipate this being an issue at the time of the Application.</p> <p>The Applicant proposes to acquire the freehold to all approaches to the bridges over the railway to ensure they can be maintained by the local highway authority. It is not anticipated that this will restrict the ability of the operator of the communications mast operator to access the mast from Marsh Lane.</p>	<p>The Applicant will discuss this issue further with BPC but can confirm that there is no intention to prevent access to the mast.</p>

