



# MetroWest+

## Portishead Branch Line (MetroWest Phase 1)

**Planning Inspectorate Reference: TR040011**

**Applicant: North Somerset District Council**

### 9.3.14 ExA.SoCG-WPD.D7.V2 – Statement of Common Ground

Between:

- (1) North Somerset District Council; and
- (2) Western Power Distribution (South West) PLC

**Version: 2**

**Date: 14 April 2021**



<b>Version history</b>			
<b>Date</b>	<b>Version</b>	<b>Status</b>	<b>Description/changes</b>
2 January 2021	1	Draft	First draft
10 February 2021	1	Draft	Draft issued to WPD for comment
14 April 2021	2	Draft	Amendments following input from WPD

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## 1. EXECUTIVE SUMMARY

- 1.1 Western Power Distribution (South West) PLC ("**WPD**") is a statutory undertaker for the purposes of the project. Section 127 Planning Act 2008 sets out various protections from compulsory acquisition of statutory undertakers' land or interests in land where an undertaker has made a representation and that representation has not been withdrawn. WPD made a relevant representation on 14 January 2020 which has not been withdrawn.
- 1.2 WPD's position is summarised as follows:
- 1.2.1 WPD does not object to the DCO Scheme in principle but as a network operator it is required – by the Electricity Act<sup>1</sup> - to develop and maintain an efficient, coordinated and economical distribution system.
- 1.2.2 The DCO Scheme as it stands conflicts with WPD's obligations in this regard and there is specific concern about the unresolved issues between the Applicant and National Grid Electricity Transmission PLC ("**National Grid**") in relation to the 132kV crossings both overhead and underground.
- 1.2.3 This statement identifies where there are issues of difference with the Applicant and whilst WPD agrees that the points are capable of being agreed – and is fully cooperating with the Applicant to achieve this – they nevertheless remain unresolved. This continues to be a matter of concern to WPD.
- 1.3 The Order includes rights to compulsorily acquire WPD's interest in land within the Order Land subject to the protective provisions in Part 7 Schedule 16.
- 1.4 WPD submitted a statement at Deadline 2 which set out its position and the issues between the Applicant and WPD. It advocated its position at Compulsory Acquisition Hearing 1 on 4<sup>th</sup> December 2020. It then responded to the Examining Authority's second round of written questions (ExQ2) at Deadline 5. Further negotiations have followed.
- 1.5 This Statement of Common Ground highlights the issues remaining between the Applicant and WPD and those on which agreement has been reached which can be summarised as follows:

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<sup>1</sup> Section 9, Electricity Act 1989

- It is not agreed how WPD's rights granted under the National Grid (Hinkley Point C Connection Project) Order will be protected and preserved for its 132kV crossing of the railway (plot 183) and an alternative right of access to that over plot 185 will be secured. The parties have agreed in principle that this might be secured by easement but no details have been progressed;
- It is not agreed how the rights to retain the existing 132kV overhead line (the "W" route) will be preserved prior to the removal of that line in circa 2024 to facilitate National Grid's overhead 400kV Hinkley Connection.
- It remains between the parties the form of protective provisions that should be inserted in the Order. However only one point remains between the parties and that relates to paragraph 83 which is not agreed by WPD.

1.6 In addition to the above the following points remain to be resolved;

- How access over plot 185 might be replaced and the impact that has on rights granted to WPD in the Connection Order over land in the ownership of Mr Crossman.
- How any agreements or disagreements between the Applicant and National Grid in respect of the Connection Order might impact on WPD's rights or protections.

1.7 The parties have agreed to work together to resolve the issues raised by WPD post-Deadline 7 and as a matter of urgency.

## **2. LIST OF TABLES**

- 7.1 Relevant Representation and Applicant responses
- 8.1 National Grid (Hinkley Point C Connection Project) Order 2016 ("Connection Order")
- 8.2 WPD's existing network and diversions
- 8.3 Protective Provisions
- 8.4 Telecoms

### 3. ABBREVIATIONS

2008 Act	Planning Act 2008
APA	Asset Protection Agreement
Applicant	North Somerset District Council
DCO	Development Consent Order
ES	Environmental Statement
HRA	Habitats Regulations Assessment
PINS	Planning Inspectorate
SoCG	Statement of Common Ground

- 3.1 In the text, "DCO Document Reference" refers to the DCO document reference number as shown on the Applicant's submitted documents and recorded in the Applicant's 'Guide to the Application'. This Guide, and the documents referenced, are available on the Portishead Branch Line (MetroWest Phase 1) [project page on the PINS website](#).
- 3.2 In cases where a document appears twice in the Application and there are two DCO Document Reference numbers, (for example, the AGVMP which appears twice as standalone DCO Document Reference number 8.12 and as ES Appendix 9.11, DCO Document Reference 6.25), we have used the DCO Document Reference for the standalone document.
- 3.3 In addition to the Applicant's DCO Document Reference, all documents introduced to the Examination have been given a unique reference by PINS. This includes all of the Applicant's submitted documents, along with those submitted by other parties (and PINS) and introduced into the Examination. The PINS references are indexed in the 'Examination Library' available on the project page, and the Applicant's Guide to the Application updated and submitted at each Deadline.

#### **4. INTRODUCTION**

- 4.1 This Statement of Common Ground ("SoCG") has been prepared by North Somerset District Council ("**the Applicant**") with Western Power Distribution (South West) PLC ("**WPD**") to set out the areas of agreement and disagreement between the parties in relation to the Development Consent Order ("**DCO**") application for the Portishead Branch Line (MetroWest Phase 1) ("**the DCO Scheme**") based on consultation to date.
- 4.2 This SoCG comprises an agreement log which has been structured to reflect topics of interest to WPD in relation to the application for the DCO Scheme. Topic specific matters agreed and not yet agreed between the Applicant and WPD are included.

#### **5. SCHEME OVERVIEW**

- 5.1 The Applicant has applied to the Planning Inspectorate ("**PINS**") for a DCO to construct the Portishead Branch Line under the Planning Act 2008 ("**the Application**"). The Application was made on 15 November 2019 under reference TR040011 and was accepted for examination on 12 December 2019.
- 5.2 The DCO Scheme will provide an hourly (or hourly plus) railway service between Portishead and Bristol Temple Meads Railway Station, with stops at Portishead, Pill, Parson Street and Bedminster.
- 5.3 The DCO Scheme comprises the Nationally Significant Infrastructure Project ("**NSIP**") as defined by the Planning Act 2008 ("**the 2008 Act**") to construct a new railway 5.4 kilometres long between Portishead and the village of Pill, and associated works including a new station and car park at Portishead, a refurbished station and new car park at Pill and various works along the existing operational railway line between Pill and Ashton Junction where the DCO Scheme will join the existing railway. Ashton Junction is located close to the railway junction with the Bristol to Exeter Mainline at Parson Street.<sup>2</sup>

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<sup>2</sup> Please refer to Schedule 1 of the draft Order (DCO Document Reference 3.1) for more detail.

5.4 The Application has been accompanied by an Environmental Statement ("**ES**") because the DCO Scheme is classified as EIA development in the EIA Regulations 2017<sup>3</sup>.

## **6. MATTERS OF INTEREST TO WPD**

6.1 The matters of interest to WPD were set out in its Written Representation dated 23 November 2020 and submitted for Deadline 2. In particular paragraphs 2 through to 5 set out the matters of interest to WPD. [A copy of that Written Representation is appended to this SoCG at Appendix 2].

## **7. OVERVIEW OF ENGAGEMENT**

### 7.1 Introduction

7.1.1 This section briefly summarises the engagement that the Applicant has had with WPD. For further information on the consultation process please refer to the Consultation Report (DCO Document Reference 5.1).

### 7.2 Pre-application

7.2.1 The Applicant has engaged with WPD during the pre-application stage in respect of draft Protective Provisions and a proposed Asset Protection Agreement ("**APA**").

7.2.2 The Consultation Report (DCO Document Reference 5.1) includes a summary of the interface locations between the DCO Scheme and the apparatus of WPD, the proposed DCO Scheme activities in those locations, and the proposed protective actions agreed between the Applicant and WPD (see the table from page 10-219).

### 7.3 Post-application

7.3.1 Following the submission of the Application on 15 November 2019, the Applicant and WPD have continued to engage in respect of the draft Protective Provisions and APA.

7.3.2 WPD submitted a Relevant Representation to the Examination and this is set out in section 8 of this SoCG alongside the Applicant's response.

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<sup>3</sup> The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

- 7.3.3 WPD submitted a Written Representation dated 23 November 2020 for Deadline 2 (which has not been withdrawn), and attended the Compulsory Acquisition Hearing ("**CAH1**") on 5 December 2020.
- 7.3.4 The Applicant responded to WPD's Written Representation in its response to submissions made at Deadline 2.
- 7.3.5 The following section sets out WPD's Relevant Representation (made following publication of the acceptance of the Application pursuant to Section 56 of the 2008 Act) and the Applicant's response.
- 7.3.6 Section 8 onwards provides detail on the matters raised by WPD during the course of the DCO Scheme examination, the actions taken by the Applicant (with input from Network Rail where necessary) in response, and whether the matter is agreed or remains to be agreed.

## 8. RELEVANT REPRESENTATIONS

- 8.1 The following table sets out the comments received by the Applicant from WPD as Relevant Representations following PINS' acceptance of the Application, and the Applicant's response.
- 8.2 WPD's Relevant Representation was accepted into the examination with reference 'RR-029' and is available here: <https://infrastructure.planninginspectorate.gov.uk/projects/south-west/portishead-branch-line-metrowest-phase-1/?ipcsection=relreps&relrep=39213>.
- 8.3 The Applicant responded to WPD's Relevant Representation at Deadline 1 (DCO Document Reference 9.4 ExA.RR.D1.V2) accepted into the examination with reference 'REP1-029'.

**Table 7.1: Relevant Representation and Applicant responses**

Ref.	Topic	WPD position	Applicant position
RR-029 (1)		<p>We act for Western Power Distribution (South West) plc ('WPD') whose registered office is at Avonbank, Feeder road, Bristol, BS2 0TB.</p> <p>Please accept this as WPD's representation consisting of a holding objection to the application by North Somerset Council for an order granting development consent for the Portishead Branch Line – MetroWest Phase 1 (the 'Scheme').</p> <p>Assets and interests in land are comprised in the proposed Scheme which are held by WPD for the purposes of its undertaking. The objection is made</p>	<p>The Applicant has been engaging with Western Power Distribution (WPD) since 2016 and has submitted C3 utility enquiries for all interactions with WPD's apparatus. WPD has responded to the C3 enquiries and indicated the works required to either protect and leave the apparatus in situ or if the apparatus is required to be moved / diverted. Where the apparatus is required to be moved, the Applicant has included the land and rights within the Order to facilitate these works.</p>

Ref.	Topic	WPD position	Applicant position
		<p>on the grounds that discussions with North Somerset Council as to the protection of WPD assets affected by the proposed Scheme are ongoing. No formal agreement has yet been concluded and accordingly we are lodging this objection to protect our position pending conclusion of an appropriate agreement. When an agreement is signed and completed, we will notify the Planning Inspectorate promptly and withdraw the objection.</p>	<p>Draft Protective Provisions for WPD have been included in the Order and a draft agreement relating to the apparatus affected by the proposed Order is in the process of negotiation with the Applicant. The Applicant is working with WPD's legal representatives to understand if any amendments are required to the Protective Provisions and draft agreement. It is the intention to reach agreement on the form of the Protective Provisions and agreement with WPD as soon as possible.</p>

## 9. MATTERS RAISED IN WPD'S WRITTEN REPRESENTATIONS

The following table sets out the issues raised in WPD's written representations (including post-hearing representations incorporating issues raised during Compulsory Acquisition Hearing 1 (CAH1)).

**Table 8.1: National Grid (Hinkley Point C Connection Project) Order 2016 ("Connection Order")**

Ref.	Topic (stage issue raised)	WPD position	Applicant position	Status (Agreed/ Not Yet Agreed)
8.1.1	WPD rights under the Connection Order	<p>WPD was granted certain rights as an undertaker pursuant to the Connection Order. In particular the Order permitted works (defined as "WPD Works").</p> <p>Work No.4D permitted the diversion of a 132kV electricity line known as the "W route" from an overhead line to an underground line beneath the proposed railway within plot 185 and permitted access over plot 183.</p>	<p>The Applicant acknowledges that WPD is an undertaker for the purposes of the Connection Order in respect of the 'WPD Works' as defined therein. The WPD Works are Works Nos. 4A to 4P and any associated development in connection with those Works.</p> <p>The Applicant acknowledges Work No. 4D under the Connection Order and its interface with the DCO Scheme. The undergrounding of the 132kV electricity line within plot 185 of the Connection Order crosses the railway through plot 02/70 of the DCO Scheme. The access over plot 183 of the Connection Order is the accommodation crossing over the railway plot 02/125, scheduled for compulsory acquisition (and closure) under the DCO Scheme.</p>	Agreed.

Ref.	Topic (stage issue raised)	WPD position	Applicant position	Status (Agreed/ Not Yet Agreed)
			The relevant Land Plans and Works Plans of the Connection Order and Land Plans for the DCO Scheme are appended to this SoCG at [Appendix 1]	
8.1.2	WPD works under the Connection Order	<p>WPD's rights under the Connection Order are subject to the consent of National Grid.</p> <p>In respect of Work no.4D, National Grid, through its contractors, is undertaking the works on behalf of WPD. Once completed the works will be handed over to WPD.</p> <p>To date the ducts for the underground cable have been installed under the proposed railway. Cables have or will shortly be pulled through the ducts, following which they will be energised and the existing overhead line will be removed.</p>	Noted.	Agreed.
8.1.3	WPD's rights under both Orders	WPD therefore need to ensure that the Order does not extinguish WPD's rights to the existing overhead line until that line is removed, and that the rights for the underground diversion under the Connection Order are preserved and not	The Applicant will not extinguish WPD's rights to the existing overhead line until that line is removed. WPD currently has no property right to retain use and maintain the underground diversion. The Applicant is willing to	Not Yet Agreed

Ref.	Topic (stage issue raised)	WPD position	Applicant position	Status (Agreed/ Not Yet Agreed)
		extinguished by the rights under the Order.	treat with WPD in relation to those rise rights and awaits either a draft easement from WPD or service of appropriate notices for permanent new rights under the Connection Order. The Applicant is willing to grant the relevant rights, save for it does not wish to have its railway subject to rights of access at surface level.	
8.1.4	Need for clarity in SoCGs over preservation of WPD's rights	The Statement of Common Ground between North Somerset Council ("NSC") and National Grid does not make reference to WPD's network and works. The SoCG does not consider WPD's rights under the Connection Order or how these will be preserved. WPD has highlighted its queries with National Grid. We would request therefore that NSC in the next iteration of the SoCG is provides clarity around the preservation of WPD's rights under the Connection Order to ensure that those rights are not extinguished by the Order. Were such rights not to be preserved WPD would not be able to maintain its 132kV underground cables in the railway which would have a serious detrimental effect.	<p>The Applicant notes this representation was made at a time when there was no draft SoCG with WPD in circulation, and a SoCG with National Grid (NGET) had already been submitted into the examination in draft form.</p> <p>The Applicant expects this SoCG with WPD to address the points raised and will seek to update the SoCG with NGET where necessary.</p>	Not Yet Agreed

**Table 8.2: WPD's existing network and diversions**

Ref.	Topic (stage issue raised)	WPD position	Applicant position	Status (Agreed/ Not Yet Agreed)
8.2.1	Agreed works	<p>WPD has provided North Somerset Council proposals to divert some of its electricity cables to accommodate the project. These proposals are mostly diversion of electricity lines on wood poles. The proposals are in the form of offers to undertake works which must be accepted by North Somerset Council within a limited time period. The time period for accepting the proposal is fixed to preserve WPD's position on costs and so as not to limit other works to the network. The time period for accepting the current offers have expired and will need to be requoted.</p> <p>We explain this process to clarify that there is no legally binding agreement in place for diverting existing apparatus albeit the diversions have been planned and are unlikely to change.</p> <p>Once the Order is made WPD will need to re-issue the proposals. In the meantime WPD needs to rely on the</p>	<p>The Applicant notes the extensive engagement between its own engineers and those of WPD to assess the apparatus interfaces and agree suitable works for diversions and protective measures. The Applicant does not expect any changes to these agreed works.</p> <p>The Applicant is working to accommodate the requirements of WPD alongside those of other stakeholders including Network Rail and, where relevant, NGET. The Applicant acknowledges WPD's preferred terms for Protective Provisions and a side agreement ('APA'), and will continue to work with WPD to agree such terms.</p>	Not Yet Agreed

Ref.	Topic (stage issue raised)	WPD position	Applicant position	Status (Agreed/ Not Yet Agreed)
		Protective Provisions (and a subsequent side agreement) to protect its network. Without such protection in place North Somerset Council would acquire rights that could potentially have a serious detriment on WPD's network.		
8.2.2	Protective Provisions and side agreement	WPD also has assets in the Order Land that will not require diverting but will need to be protected. The protective provisions (and any side agreement) once agreed will ensure the works will not cause a serious detriment to WPD's undertaking.	The Applicant will continue to work with WPD in regard to the appropriate protection of such assets.	Not Yet Agreed

**Table 8.3: Protective Provisions**

Ref.	Topic (stage issue raised)	WPD position	Applicant position	Status (Agreed/ Not Yet Agreed)
8.3.1	Draft Protective Provisions	The protective provisions in Part 7 Schedule 16 of the draft Order are those requested by WPD with the following exceptions:	In respect of exception (a) the Applicant has accepted the removal of this per-event cap from the draft Protective Provisions. The Applicant notes this comment has been made by	Exception (a) is agreed. Exception (b) is not yet agreed.

Ref.	Topic (stage issue raised)	WPD position	Applicant position	Status (Agreed/ Not Yet Agreed)
		<p>(a) In paragraph 81(2)(b) NSC are seeking to limit consequential losses to £500,000 per event.</p> <p>(b) A new clause 83 has been inserted that seeks to exclude any enactment or agreement regulating relations between WPD and NSC or Network Rail in respect of any apparatus laid or erected in land belonging to the undertaker or Network Rail on the date that the Order is made.</p>	<p>WPD on the basis of the draft Protective Provisions contained in the draft Order which will be updated once the Protective Provisions are fully agreed.</p> <p>In respect of exception (b) the amendment is not agreed but the parties will continue to progress the draft Protective Provisions.</p> <p>The conclusion of these drafting points is dependent on, and interrelated with, the side agreement being negotiated by the parties.</p>	
8.3.2	Draft protective provisions	In respect (a) WPD consider that this is an unreasonable limitation and places risk on WPD for any losses that exceed this amount. WPD as a regulated statutory undertaker is not in a position to assume the risk of a public project. WPD's customers are not the public as a whole and therefore this limitation places the project risk on to third parties.	See response to 8.3.1 above	-
8.3.3		In respect of (b) WPD considers that this provision is too wide and it is unable to	See response to 8.3.1 above.	

Ref.	Topic (stage issue raised)	WPD position	Applicant position	Status (Agreed/ Not Yet Agreed)
		<p>determine what effect such a limitation would on its network.</p> <p>WPD question why the provisions should be limited by agreements with Network Rail when Network Rail is not the beneficiary of the Order. If NSC considers that existing agreements can be relied on it should exclude WPD's interest from the book of reference. Attached is a table listing all of the plots that WPD has an interest in. These are numerous and to merely refer to a sweeping exclusion does not clarify which plots will benefit from the protective provisions and which will not. WPD considers that NSC has not made out a compelling interest to acquire interests where it cannot be clear whether the protective provisions will apply or not. It considers that the burden should be on the undertaker and not WPD to provide clarity on this point.</p>	<p>Further, where the Order land has the burden of existing rights in favour of WPD that allow WPD to retain use and maintain its apparatus, and those rights are not being interfered with, the existing rights and provisions applicable to the relevant crossing of the Order land by WPD can enure.</p>	
8.3.4	Asset Protection Agreement	WPD's acceptance of the protective provisions is on the understanding that an Asset Protection Agreement as a side agreement is entered in to between NSC and WPD. Such agreements are	This understanding is shared by the Applicant. Equally however the process should not be used to increase the Benefit on the Order land when the	Not Yet Agreed

Ref.	Topic (stage issue raised)	WPD position	Applicant position	Status (Agreed/ Not Yet Agreed)
		standard in DCOs where statutory undertakers' assets are being diverted and provide an additional layer of security that protects the undertaker from serious detriment to its network.	existing agreement is perfectly satisfactory.	
8.3.5	Protective Provisions and Asset Protection Agreement	<p>Following a request from Ardent on behalf of NSC WPD (through Osborne Clarke LLP) first provided draft protective provisions and a draft Asset Protection Agreement to Womble Bond Dickinson in November 2018. WBD have indicated that the protective provisions provided are acceptable (subject to the fact that points (a) and (b) above are not WPDs' standard terms and are not agreed) but has not confirmed that position in writing or agreement to conclude an Asset Protection Agreement.</p> <p>WPD reserve its position on the protective provisions subject to resolving the outstanding conflict issues with the Connection Order as noted above.</p> <p>At the present time therefore WPD's position is that the protective provisions</p>	<p>The Applicant will continue to work with WPD but believes the protective provisions in the Order for the benefit of WPD mean that serious detriment will not arise.</p> <p>If WPD wishes to protect its interest in relation to the Connection Order then WPD can, or can ask NGET to, provide a suitable draft easement for consideration or serve notice to treat.</p> <p>The Applicant is willing to have its land made subject to the sub-surface rights required by WPD on reasonable terms and is looking to secure appropriate replacement surface level rights to accommodate WPD being unable to use the accommodation crossing at Shipway Gate Farm.</p>	Not Yet Agreed

Ref.	Topic (stage issue raised)	WPD position	Applicant position	Status (Agreed/ Not Yet Agreed)
		do not adequately secure protection to ensure that there will be no serious detriment to its network.		

**Table 8.4: Telecoms**

Ref.	Topic (stage issue raised)	WPD position	Applicant position	Status (Agreed/ Not Yet Agreed)
8.4.1		WPD's network is supported by fibre optic cables operated by WPD Telecoms Limited that support the electricity distribution network by managing data between operating assets. The telecoms network is therefore a key part of WPD's operating infrastructure and failure of the fibre optic would have a serious detriment on the distribution network.	The Applicant notes WPD's position and sees no reason why the telecoms network cannot be accommodated.	Not Yet Agreed
8.4.2		WPD Telecoms is securing fibre optic networks in connection with the Connection Order works which need to be protected from the proposed development. As a communication	Subject to surface level rights over the railway not being part of the grant or compulsory acquisition of new rights, this is acceptable to the Applicant. The Applicant awaits a suitably drafted	Not Yet Agreed

Ref.	Topic (stage issue raised)	WPD position	Applicant position	Status (Agreed/ Not Yet Agreed)
		network operator WPD Telecoms will also benefit from the protective provisions in Part 3 Schedule 16. However WPD also needs to ensure that WPD Telecoms network as supported by the Connection Order is not impacted by the Order.	easement for consideration or service of notices under the Connection Order.	
8.4.3		WPD therefore require NSC to demonstrate that the Order will not impact WPD Telecoms rights provided under the Connection Order to confirm that there will be no serious detriment to its undertaking.	See response to 8.4.2	

## Agreement on this Statement of Common Ground

This Statement of Common Ground has been jointly prepared and agreed by:

<b>Western Power Distribution (South West) PLC</b>
<i>Name:</i>
<i>Signature:</i>
<i>Position:</i>
<i>On behalf of:</i>
<i>Date:</i>

<b>North Somerset District Council (as Applicant)</b>
<i>Name:</i>
<i>Signature:</i>
<i>Position:</i>
<i>On behalf of:</i>
<i>Date:</i>

<b>[Network Rail Infrastructure Limited]</b>
<i>Name:</i>
<i>Signature:</i>
<i>Position:</i>

*On behalf of:*

*Date:*

**10. APPENDIX 1 – LAND PLANS AND WORKS PLANS (CONNECTION ORDER) AND LAND PLANS (DCO SCHEME)**

**11. APPENDIX 2 - WPD WRITTEN REPRESENTATION DATED 23 NOVEMBER 2020**