



MetroWest+

Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.72 ExA.CWR.D7.V1 – Applicant's response to Written Representations submitted for Deadline 7

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Portishead Branch Line – MetroWest Phase 1

Applicant's responses to submissions received at Deadline 7

No.	Type / Category	Response topic	Response	Applicant's response
TR040011-001501-001	Veale Wasbrough Vizards LLP on behalf of Exolum Pipeline System Limited	Ongoing Negotiations of Protective Provisions Agreement	<p>By correspondence dated 12 October 2020, we submitted an objection to the Scheme on behalf of Exolum. Exolum is an interested party for the purposes of the Scheme as it operates pipeline apparatus in land within the Order Limits and has received a Section 56 notice from North Somerset Council ("the Promoter"). We write to provide an update on the protective provisions agreement ("the Agreement") currently being negotiated between the Promoter, Exolum and Network Rail Infrastructure Limited in its capacity as rail operator.</p> <p>As outlined in the objection, Exolum does not object to the Scheme in principle. However, Exolum does object to any acquisition of its apparatus or rights under any compulsory acquisition powers granted in the DCO. Exolum also objects to the grant of further rights and powers to carry out works which could compromise the safety and operation of its pipelines, in the absence of suitable protective provisions and without suitable provisions for recovery of costs.</p> <p>The draft DCO contains protective provisions relating to Exolum's apparatus, drafted unilaterally by the Promoter, which</p>	<p>A further revised agreement was provided to Exolum on 14 April 2021 and it is believed the parties are close to agreement. Revised protective provisions dealing with Exolum's relevant representations are in the Deadline 7 dDCO [Doc. 3 .1 D7.V7 Examination Library ref REP7-006]. The Applicant's S127 submission [9.64 ExA.FI.D7.V1, Examination Library Ref: REP7-042] deals with the Applicant's position on Exolum's relevant representation the Applicant believes that, if agreement is not reached, Schedule 16 part 6 of the dDCO provides Exolum with sufficient protection.</p> <p>A further letter was sent to Exolum's solicitors on 19 April 2021. See Appendix 1.</p>

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			<p>provide inadequate protection of Exolum's apparatus and rights. We have not received any correspondence from PINS or the Promoter on the draft Protective Provisions since our objection and were not asked to provide any input on them in the examination.</p> <p>The Promoter offered to negotiate a separate Agreement with Exolum and we last sent them our comments on this in June 2020. We received the Promoter's draft comments in reply in January 2021 and only received Network Rail's comments on 23 March 2021. We also only received an undertaking for costs to review these comments on 23 March. We have reviewed these and responded with comments to WBD.</p> <p>Exolum continues to engage and collaborate with the Promoter to negotiate the Agreement. Its terms are largely agreed between the parties, though a small number of outstanding points remain to be settled.</p>	
TR040011-001501-002			<p>Examination & DCO</p> <p>At this stage, Exolum is confident that the parties will be able to progress the Agreement to completion however we ask that PINS retains the issue of protection of Exolum's pipeline as a live issue pending resolution of the Agreement. We ask that you set a further deadline for the Promoter to provide information to you on progress on the Agreement. If the Promoter will not enter into the Agreement with Exolum, we will need to provide further submissions to you or directly to the Secretary of State for consideration.</p> <p>We note that PINS accepted our submission (case worker's email of 12 October 2020 confirming this) but have not received any further paperwork or correspondence from PINS including</p>	The Applicant is also confident that the parties will be able to progress the Agreement to completion. The Applicant will inform the Secretary of State of progress on the agreement before the Panel reports to the Secretary of State.

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			<p>any notifications of hearings at which we would have been able to present on the issues as they affect Exolum.</p> <p>Exolum looks forward to hearing from WBD shortly regarding the Agreement.</p>	
TR040011-001502-001	Wedlake Bell LLP on behalf of Bristol Port Company	Objections to the powers proposed in the draft DCO	<p>[For points 1 – 6, only a summary has been included below due to the detail included per plot; please see the full note at https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR040011/TR040011-001502-Wedlake%20Bell%20LLP%20on%20behalf%20of%20The%20Bristol%20Port%20Company%20-%20Note%20in%20Relation%20to%20Compulsory%20Acquisition%20Matters.pdf]</p> <p>1. This note sets out and explains BPC's objections to the powers proposed in the draft DCO in respect of:</p> <p>1.1 the proposed compulsory acquisition of all BPC's interests in:</p> <p>1.1.1 part Plot 5/50; and</p> <p>1.1.2 Plot 5/27 and Plots 5/101, 5/102, 5/130, 5/131, 5/135 and 5/137 (the public path land);</p>	The Applicant has commented on this in its S127 Statement - see 9.64 ExA.FI.D7.V1, Examination Library Ref: REP7-042, Schedule 2
TR040011-001502-002			<p>1.2 the proposed compulsory acquisition of rights as set out in Schedule 10 to the draft DCO over:</p> <p>1.2.1 Plot 5/75 (and the proposed powers of temporary possession over that parcel);</p> <p>1.2.2 Plots 5/104, 5/107, 5/108, 5/165, 5/171, 6/25 and 6/55 (the rail link land) and the proposed powers of temporary possession over those parcels; and</p>	- The Applicant has commented on this in its S127 Statement - see 9.64 ExA.FI.D7.V1, Examination Library Ref: REP7-042, Schedule 3.

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			Plots 5/103 and 5/112;	
TR040011-001502-003			<p>1.3 the extinguishment of BPC's rights over:</p> <p>1.3.1 plots 5/95, 5/100, 5/105, 5/122, 5/137, 5/140, 5/141, 6/10, 6/15, 6/20, 6/55, 6/60 and 6/80 (the railway rights land); and</p> <p>1.3.2 plots 5/30, 5/61, 5/62, 5/65 and 5/70 (the highway access land);</p>	The Applicant has commented on this in its S127 Statement - see 9.64 ExA.FI.D7.V1, Examination Library Ref: REP7-042, Schedule 3.
TR040011-001502-004			<p>1.4 the proposed powers of temporary possession in relation to:</p> <p>1.4.1 Plots 5/25, 5/95, 5/100, 5/105, 5/106, 5/112 and 5/113 and that part of parcel 5/28 which lies to the east of an imaginary line projected in a northerly direction across the disused railway at 126 miles 78 chains (the Marsh Lane track land), which includes BPC's private internal access road leading from Marsh Lane;</p> <p>1.4.2 Plots 5/103 and 5/170; and</p> <p>1.4.3 other parts of the Port estate to the extent that those powers might be used to create additional haul roads; and</p>	<p>1.4.1 The Applicant confirmed in its letter of 14 April 2021 - see Appendix 2 to Applicant's Responses to the Rule 17 Request (doc ref 9.61 ExA.FI.D7.V1, Examination Library ref: REP7-039) that it would not seek to exercise powers of exclusive possession over the Marsh Lane Track.</p> <p>1.4.2 the Applicant looks to occupy these plots on a temporary basis for a construction compound.</p> <p>1.4.3 The Applicant does not propose any additional haul roads on BPC land.</p>
TR040011-001502-005			<p>1.5 the suspension or overriding, during temporary possession or construction, of the rights of BPC and others to use the rail link land and the Marsh Lane track land.</p>	1.5 The Applicant does not propose to suspend the rights of parties with the benefit of existing rights over the Marsh Lane track nor the ability of BPC to use the March Lane Track. Public rights of way will however be suspended.

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TR040011-001502-006			2. BPC seeks protective provisions to ensure that the above powers do not apply or cannot be used other than with its agreement.	The applicant has included revised protective provisions, based on but amended from, the draft provided by BPC on 10 April 2021
TR040011-001502-007			Statutory undertakers' land 3. BPC refers to and repeats paragraphs 4.1 to 4.4 of its written representation (REP2-064) and further refers to the note relating to its powers as statutory undertaker submitted at deadline 4 (REP-061). As described in those documents, all BPC's land within the Order limits was acquired by BPC or BPC's predecessor, Bristol Corporation, for the purpose of BPC's statutory undertaking and is now used by BPC for the purpose of that undertaking or is land in which an interest is held for that purpose.	See the Applicant's S127 Statement Schedule 3 (9.64 ExA.FI.D7.V1, Examination Library Ref: REP7-042). The Applicant believes that some land (such as plot 3/78 and 6/61 on the land plans (Doc ref. 2.2, Examination Library ref: REP5-005) cannot be seen to be lands that their use would give rise to serious detriment at and the Secretary of State when applying S127 of the Planning Act 2008 can consider that the powers sought can be given to the Applicant. To the extent that S127 otherwise applies the protective provisions at Schedule 16, para 5 of the draft DCO mean that serious detriment does not apply.
TR040011-001502-008			4. All BPC's land within the Order limits is therefore land to which section 127(1) Planning Act 2008 applies, and hence is 'statutory undertakers' land' for the purpose of the application of section 127(2), (3) and (5). In its comments on BPC's written representation (REP3-036 BPC- D2-004) the Applicant agreed that in principle section 127(1) was engaged in relation to BPC's land.	Whilst s127 may apply the Applicant does not accept that serious detriment arises for any of the plots included in the land plans and book of reference. The protective provisions at Schedule 16, para 5 of the draft DCO mean that the secretary of state can consider that land or right may be acquired without causing serious detriment to the carrying on of BPC's undertaking.
TR040011-001502-009			5. As a result, the DCO may not authorise the compulsory acquisition of BPC's land within the Order limits or of any rights over that land unless the Secretary of State is satisfied that the land or right may be acquired without causing serious detriment to the carrying on of the undertaking or it can be replaced by (or the detriment caused by the right can be made good by) the use or acquisition of other land available to the undertaker.	The protective provisions at Schedule 16, para 5 of the draft DCO mean that the Secretary of State can consider that land or right may be acquired without causing serious detriment to the carrying on of BPC's undertaking.
TR040011-001502-010			6. BPC considers these tests cannot be met in relation to certain parts of its land within the Order limits. BPC accordingly objects to the powers of compulsory	The protective provisions at Schedule 16, para 5 of the draft DCO mean that the secretary of state can consider that land or

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			acquisition and temporary possession set out below and to the extinguishment of certain of its rights. BPC requires protective provisions to prevent the extinguishment of the relevant rights and to prevent the acquisition of the relevant land or rights or the exercise of the powers of temporary possession without its consent.	right may be acquired without causing serious detriment to the carrying on of BPC's undertaking.
TR040011-001502-011			<p><i>Other construction access</i></p> <p>48. Except for any use of the Marsh Lane track to which BPC may agree, BPC objects to parts of the Port estate over which powers of temporary possession are sought being used as or to create additional haul roads.</p>	No additional haul roads are proposed or contemplated by the Applicant.
TR040011-001502-012			<p>49. BPC has explained the concerns that arise from the use of haul roads on the Port estate in relation to the proposed use of the Marsh Lane track. The same concerns would arise if the Applicant sought to create further haul roads elsewhere. There are no other areas on the Port estate within the Order limits which would be suitable for use for construction access, and, so far as BPC is aware, no further haul roads on the Port estate are proposed by the Applicant or required in connection with the DCO scheme other than the Marsh Lane track and any access that might be required during construction over Plot 5/75.</p>	The Applicant has no proposal to create additional haul roads. The Applicant has consistently taken the approach throughout the preparation of the application, the examination and in dialogue with BPC that it does not intend to seek powers within the port's dock fence, or secure areas. The only gate through which the Applicant seeks powers is on the public bridleway that is the Marsh Lane Track, located close to the junction of the Marsh Lane Track with the highway of Marsh Lane, within plot 05/112 (see sheet 5 of the Land Plans (Doc ref. 2.2, Examination Library ref: REP5-005).
TR040011-001502-013			<p>50. While BPC does not wish to prevent powers of temporary possession being exercised generally over its land (except in relation to the areas specified in 39) it needs to prevent those powers being used to create further haul roads. BPC therefore requires a protective provision in the form set out in paragraph 59(1)(c) of BPC's protective provisions.</p> <p><i>Suspension and overriding of rights</i></p>	The Applicant can confirm that no additional haul roads other than the Marsh Lane Track are proposed or required. The proposed protective provision is unnecessary.
TR040011-001502-014			<p>51. If and to the extent BPC agrees to the exercise of temporary possession over the Marsh Lane track land and the rail link land, the undertaker's use of those areas and facilities</p>	The Applicant does not seek exclusive possession of the Marsh Lane Track.

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			cannot and will not be exclusive to the undertaker: the track on the Marsh Lane track land and the railway on the rail link land must continue to be available for use by BPC, its customers and other authorised users. If this were not the case, significant disruption would plainly be caused during construction of the scheme to the interests of BPC and its customers in relation to their use of the Port and in connection with the carrying on of BPC's statutory undertaking.	
TR040011-001502-015			52. The Applicant has stated (in REP3-036, at BPC-D2-006) that it does not intend to use its Order powers to extinguish the rights of other parties to use the Marsh Lane track. As noted by BPC in REP4-058, this commitment should be secured in the DCO. It should also be extended to the rights of BPC and others to continue to use the Port's railway.	The Applicant wrote to PBC on 14 April 2021 confirming the position. A protective provision is unnecessary.
TR040011-001502-016			53. BPC therefore requires protective provisions in the form of paragraphs 57(2) and 59(2) of BPC's protective provisions.	See comments above
TR040011-001503-001	Wedlake Bell LLP on behalf of Bristol Port Company	Protective provisions required by BPC	<p>Note on behalf of First Corporate Shipping Limited trading as The Bristol Port Company (BPC) in respect of protective provisions required by BPC dated 14 April 2021</p> <p>38 page response detailing status of protective provisions, see:</p> <p>https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR040011/TR040011-001503-Wedlake%20Bell%20LLP%20on%20behalf%20of%20The%20Bristol%20Port%20Company%20-%20Note%20in%20Respect%20of%20Protective%20Provisions%20Required%20by%20Bristol%20Port%20Company.pdf</p>	The Applicant's responses are below.
TR040011-001504-001	Wedlake Bell LLP on behalf of Bristol	Response to the Examining Authority's	<p>[For the appendices included in the submission, see https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR040011/TR040011-001504-Wedlake%20Bell%20LLP%20on%20behalf%20of%20The%20Bris</p>	The Applicant's responses are below.

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	Port Company	request for information	<p>tol%20Port%20Company%20-%20Note%20in%20Respect%20of%20the%20Easement%20at%20Court%20House%20Farm.pdf]</p> <p>1. This note is provided in response to the Examining Authority's request for information dated 29 March 2021, Annex C, questions for BPC.</p> <p><i>Question</i></p> <p><i>With regard to the timescales for the removal of the at grade crossing you refer to a deed of a grant of easement dated 4 September 2017 between Network Rail and First Corporate Shipping Limited can you provide a copy of this agreement with the relevant sections highlighted and/or provide a summary of what this document requires with regards to the removal of the at grade crossing and the construction of the vehicular bridge. action point 28 arising from Issue Specific Hearing 5 on 4 March 2021.</i></p> <p>2. A full copy of the easement dated 4 September 2017 is attached, with the relevant provisions relating to its termination highlighted. The easement is referred to in this note as the Court House Farm easement.</p>	
TR040011-001504-002			<p><i>Question</i></p> <p><i>The BPC have advised that the principle point of contention with Network Rail Infrastructure Limited is when the BPC would be required to construct the vehicular bridge across the railway to replace the at grade crossing [Point 11, AS-052]. The BPC [CA.1.10, REP3-046] state that the DCO as drafted currently</i></p>	-

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			<p><i>makes no provision to ensure that they have adequate time to construct the alternative crossing in accordance with the timescale envisaged by the planning permission and as previously envisaged by BPC and the Applicant.</i></p> <p>Should this matter not be resolved by the end of the Examination could both the Applicant and the BPC indicate how they consider this matter could be secured through the DCO and provide appropriate wording.</p>	
TR040011-001504-003			<p><u>Summary</u></p> <p>3. It has not been possible for BPC and Network Rail Infrastructure Limited (NR) to reach agreement on the terms on which BPC will be permitted to construct a bridge across the disused railway in the vicinity of Court House Farm as an alternative to the current at-grade crossing. During the discussions, a key issue in contention has been NR's requirement that, under any agreement, BPC's construction of the bridge could not continue after the expiry of a fixed period from the date the DCO for the MetroWest scheme is made. NR further insists that BPC's right to use the at-grade crossing must cease at the end of that same, fixed period so that by then the crossing must also have been removed, regardless of whether the DCO scheme is to go ahead.</p>	The Applicant believes this is a matter for BPC and NR. The Applicant has excluded the Court House Farm easement in the Book of Reference [doc 4.3 D7.V4 Examination Library ref RE7-013] for plots 04/95 and 05/05, as shown on the Land Plans [Doc 2.2 D5.V3 Examination Library ref REP5-003]. This excludes the interest from Order Lands as defined in the dDCO. S127 of the Planning Act 2008 is therefore not engaged.
TR040011-001504-004			<p>4. Despite constructive discussions, a draft of an agreement between BPC and NR relating to the construction of the bridge is not yet in circulation. While BPC anticipates that discussions with NR as to the terms of such an agreement will continue beyond the close of the Examination, in the absence of such an agreement now BPC needs to secure the continuation of its current access over the at-grade crossing for an appropriate period. It therefore requires a protective provision in the following terms:</p>	The Applicant believes this is a matter for discussion between BPC and NR. The Applicant will continue to engage in and facilitate discussion and agrees with BPC that the discussion to date have been constructive.

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			<p><i>"(1) Despite anything contained in the Court House Farm easement or any other agreement relating to the Court House Farm terminable access, BPC's rights to use the Court House Farm terminable access under and in accordance with the Court House Farm easement or such other agreement must not terminate or cease to be exercisable before the date which is fifteen months after the approval date, and the Court House Farm easement and any such other agreement are modified accordingly.</i></p> <p><i>(2) In sub-paragraph (2), the "approval date" is the first date on which each of the Full Council of North Somerset Council, the West of England Joint Committee, the West of England Combined Authority Committee and The Secretary of State for Transport has confirmed in writing its approval under the Department for Transport WebTAG technical process for the appraisal of major transport schemes of the Full Business Case and the Final Approval Business Case in relation to the MetroWest Phase 1 proposals, including the authorised development."</i></p> <p><i>"Court House Farm easement" means a Deed of Grant of Easement dated 4 September 2017 made between Network Rail and First Corporate Shipping Limited t/a The Bristol Port Company."</i></p> <p><i>"Court House Farm terminable access" means the existing crossing at grade over the disused Portishead Branch Line which is described in the Court House Farm easement."</i></p>	
TR040011-001504-005			<p>5. BPC provided the form of this protective provision to the Applicant, on a without prejudice basis, on 23 February 2021. The Applicant does not agree to its inclusion in the DCO.</p>	The Applicant continues to resist the inclusion of the protective provision. Its reasons are provided in its Rule 17 response

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				provided at deadline 7 [9.61 D7.V1 Examination Library ref REP7-039]
TR040011-001504-006			<p><u>Background</u></p> <p>6. BPC refers to its previous comments and representations on this topic, including:</p> <ul style="list-style-type: none"> • REP2-064 (written representation) para 2.2.3 and 5.7; • AS-052, para 11; • REP3-046 (in respect of ExQ1 CA.1.10; • REP5-049; and • REP6-048 and REP6-051. 	-
TR040011-001504-007			<p>7. The at-grade crossing over the disused railway connects two vehicle transit storage compounds. The compounds are used for the transit storage of vehicles being imported by a vehicle manufacturer through Royal Portbury Dock. The two compounds are therefore used for the purposes of carrying on BPC's statutory undertaking. Access to the compound south of the disused railway is only available via the rest of the Port estate, first to the northern compound and then over the at-grade crossing. Access is not available to the southern compound direct from the public highway. If access between the two compounds over the at-grade crossing were prevented before BPC had had a reasonable opportunity to construct an alternative access (a bridge) across the railway, the carrying on of BPC's statutory undertaking would accordingly be subjected to serious detriment.</p>	As explained above, the Applicant does not believe that the provisions of S127 of the 2008 Act are engaged. In any event the Applicant confirms it will not use any of its powers in the Order, if made, to acquire override extinguish or otherwise interfere with the Court House Farm Access. The easement is excluded from the Order lands – see entries for Plots 4/95 and 05/05 of the Applicant's Book of Reference.
TR040011-001504-008			<p>8. BPC must therefore be permitted adequate time to construct the new bridge over the disused railway, during which time it must be permitted to continue to use the at-grade crossing. BPC's current estimate of the time necessary to design and construct the bridge, as outlined in its oral case at ISH5 and later in its note to the ExA in response to action point 28 arising</p>	This is a matter for BPC. BPC agreed to a 12 month termination provision in the easement dated 4 September 2017, of which a copy was provided with BPC's Rule 17 response. On any basis therefore the period of 12 months must be the maximum that BPC thought was needed when it entered in to the deed of easement.

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			from that hearing [REP6-048 and REP6-051], is 15 months. BPC is not aware of any challenge to that estimate by the Applicant.	<p>The Applicant was supposed to be consulted under condition 16 of planning permission 16/P/1987/F [REP6-032] before the Court House Farm access was installed. Despite it crossing:</p> <ol style="list-style-type: none"> 1. a public bridleway; and 2. Network Rail's Railway; <p>the Applicant now understands BPC's development has been built out without this pre commencement condition being discharged.</p> <p>Both Network Rail and the Applicant were to be consulted before the condition was discharged. Neither Network Rail or the Applicant were consulted. The Applicant would not have accepted a 15 month build period for a new bridge as being acceptable. The Applicant believes that if such a period is required then it is for BPC to start the process now, so as to not impede the implementation of the DCO Scheme.</p>
TR040011-001504-009			9. The time period proposed by NR within which BPC would be permitted to build the bridge, and at the end of which BPC's right to use the at-grade crossing must cease - and indeed by which BPC must also have removed the at-grade crossing - is less than the 15 months required by BPC's programme.	This is a matter for BPC and NR. BPC agreed to the 12 month termination provision in the 2017 deed of easement.
TR040011-001504-010			10. Further, NR's position is that this shorter period must start as soon as the DCO is made. BPC considers it would be manifestly unreasonable for BPC to be forced to expend considerable cost in first the detailed design and then actual construction of a bridge, and in the removal of the at-grade crossing, until it is clear that the bridge is required and that it is necessary that the crossing be removed.	This is a commercial decision for BPC. It has chosen to develop its scheme, despite not first consulting with NR or the Applicant, as required to under planning permission 16/P/1987/F [REP6-032] granted to BPC. As the required consultation has not taken place, the Applicant has not been able to provide its views on the appropriate timetable for the removal of the temporary crossing. In any event (and without accepting that 12 months is an appropriate period) it cannot be that more than 12 months is required, given the provisions of the 2017 deed of Easement.

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TR040011-001504-011			11. The Court House Farm easement permits notice to be given by NR if and when the extent of the railway shown coloured green on the plan attached to it (referred to in the easement as the Property) is required by NR for the performance of its responsibilities as a provider of network services or for the purpose of the network business or for the purpose of railway and/or integrated transport-related development. In BPC's view, the site of the at-grade crossing cannot be required by NR for those purposes simply because a DCO is made granting the Applicant development consent for the proposed scheme, particularly when funding to implement that scheme has not been obtained and when no contractor has been appointed.	The Applicant does not agree. The Applicant and Network Rail intend to commence the authorised development just as soon as it can after receiving the required approvals and discharges of requirements. The DCO scheme should not be delayed because of the access and the matter is, or should be, controlled by condition 16 of planning permission 16/P/1987/F [REP6-032]
TR040011-001504-012			12. BPC entered into the Court House Farm easement in the knowledge that, if the disused railway were re-opened, BPC would need to give up and remove the at-grade crossing and build a bridge in its place. However BPC did not expect that it would be put in that position when the railway was not being re-opened or when it was not certain that it would be.	The Applicant suggests that there is now sufficient certainty for BPC to commence its preliminary activities at least for the new bridge, including consulting on the discharge of condition 16 of planning permission 16/P/1987/F [REP6-032]. The Applicant will work with BPC to achieve a mutually acceptable conclusion if possible but does not believe that the dDCO needs to provide for any protection of BPC given the Order powers will not apply to the 2017 Easement.
TR040011-001504-013			13. Despite this, to facilitate the DCO scheme's development, BPC would be willing to agree to start its design and construction programme for the bridge, and to incur the resulting cost, when all funding for the implementation of the scheme has been confirmed. However, it must then be allowed the full 15 months required by its programme, both as a period available to it for construction and as a period during which its rights in respect of the at-grade crossing cannot be curtailed.	The DCO scheme should not be delayed because of the access and the matter is, or should be, controlled by condition 16 of planning permission 16/P/1987/F [REP6-032]. It is for BPC to discuss timings with the local planning authority and Network Rail, outside of the DCO process.
TR040011-001504-014			14. Full funding of the DCO scheme will be available to the Applicant only on approval of the Full Business Case by North Somerset Council (Full Council), the West of England Joint	This is not acceptable to the Applicant. Such a timetable would clearly impede the implementation of the DCO Scheme which

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			Committee, the Committee of the West of England Combined Authority and the Department for Transport: see, for example, the Applicant's response to ExQ1 CA.1 5 [REP2-013] and the various approvals described in paragraphs 4.1 to 4.11 of the Funding Statement (DCO doc 4.2, APP-056). BPC therefore considers that the Court House Farm easement must not be terminated until, at the earliest, 15 months from this date.	would be contrary to the provisions of condition 16 of planning permission 16/P/1987/F [REP6-032].
TR040011-001504-015			<p><u>Protective provision</u></p> <p>15. Section 120(3) Planning Act 2008 provides that an order granting development consent may make provision relating to matters ancillary to the development for which consent is granted. The closure of the at grade crossing in this location is clearly the direct result of, and an impact of, the proposed development and, as with other crossings over the disused railway which it is proposed will similarly be closed, an ancillary matter for which, and for the mitigation of the effects of which, the DCO may make provision.</p>	For the reasons provided above the Applicant does not agree to this protective provision.
TR040011-001504-016			<p>16. Section 120(4) of the 2008 Act specifically includes among provisions that may be made by a development consent order the matters listed in Part 1 of Schedule 5. Included by paragraph 3 of that Part are provisions for the "abrogation or modification of agreements relating to land". The Court House Farm easement is an agreement relating to land, and so may be modified by a provision of the DCO.</p>	For the reasons provided above the Applicant does not agree to this protective provision.
TR040011-001504-017			<p>17. BPC's proposed protective provision above accordingly modifies the Court House Farm easement to ensure that any termination of it could not occur until BPC has been allowed sufficient time (being 15 months) from the time when full funding for the DCO scheme is made available to construct the bridge, without otherwise interfering with the operation of the Court House Farm easement or the construction programme for the authorised development.</p>	For the reasons provided above the Applicant does not agree to this protective provision. This timetable would impede the MetroWest project and would contravene condition 16 of planning permission 16/P/1987/F [REP6-032].

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TR040011-001504-018			18. Given the serious detriment that would occur if BPC were to lose its ability to cross between its two vehicle compounds, BPC considers that this provision is both necessary and proportionate.	Serious detriment does not apply as the Order does not authorise compulsory acquisition of the Court House Farm easement.
TR040011-001505-001	BDB Pitmans LLP on behalf of National Grid Electricity Transmission Plc	Response to the Examining Authority's request for information	<p>[For appendices, please see full response at https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR040011/TR040011-001505-BDB%20Pitmans%20LLP%20on%20behalf%20of%20National%20Grid%20Electricity%20Transmission%20Plc.pdf]</p> <p>We are instructed by National Grid Electricity Transmission plc ('NGET') in relation to the interaction of North Somerset Council's proposed MetroWest Phase 1 Order and the National Grid (Hinkley Point C Connection Project) Order 2016 and Correction Order 2017.</p> <p>In accordance with the Examination Timetable and the Examining Authority's ('ExA') Rule 17 Request for further information dated 29 March 2021 [PD-016], please find enclosed NGET's response to the ExA's request, along with further written submissions relating to the Applicant's proposed protective provisions for NGET, which we understand will be submitted at Deadline 7.</p> <p>Please do not hesitate to contact us should you require any further information.</p>	-
TR040011-001505-001			<p><u>1. Introduction</u></p> <p>1.1 Sections 2 and 3 of this document are a response to the Examining Authority's ('ExA') questions addressed to NGET (or addressed to NGET and the Applicant) at Annex B of their Rule 17 written request dated 29 March 2021 [PD-016].</p>	-

No.	Type / Category	Response topic	Response	Applicant's response
			1.2 At section 4 of this document, following on from NGET's response to the ExA's questions, are further submissions made in respect of proposed Protective Provisions ('PPs') which we understand the Applicant will be submitting at deadline 7 as an alternative to NGET's proposed PPs which were submitted at deadline 4 [REP4-046].	
TR040011-001505-002			<p><u>2. ExA's Questions for NGET</u></p> <p><i>Q: "Provide details (eg extract from the relevant Land Plan, SoR or Book of Reference (BoR)) of the plots for the Hinkley C Connector DCO that would be affected by the Proposed Development and details of whether it is CA or TP of these plots that will be sought."</i></p> <p>2.1 At Appendix 1, we attach Sheet 3 (and Inset A to Sheet 3) of Section F of The National Grid (Hinkley Point C Connection Project) Order 2016 ('HPCC DCO') land plans. This sheet of the HPCC DCO land plans overlaps with Sheet 2 of the Applicant's MetroWest Phase 1 (the 'Proposed Development') land plans. It can be seen from the key to the plan that the plots shaded green and blue are designated for compulsory acquisition of new rights (for apparatus and access, respectively), and the plots shaded mauve, red and yellow are plots where temporary possession only is sought. For context, and to understand the works that are authorised by the HPCC DCO in this area, we also attach at Appendix 1 Sheet 3 of Section F of the HPCC DCO works plans.</p> <p>2.2 In order to see more clearly those plots of the HPCC DCO which would be affected by the Proposed Development, we attach at Appendix 2 a plan, based on sheet 2 of the Proposed Development land plans, with those HPCC DCO plots affected by the Proposed Development superimposed on top.</p>	The Applicant is grateful for the information.

No.	Type / Category	Response topic	Response	Applicant's response
			<p>We also attach a table of plots, based on the HPCC DCO Book of Reference, listing the purpose for which each plot is required and whether each plot is for permanent rights or temporary use.</p> <p>2.3 Note that the HPCC DCO contains powers of compulsory acquisition and temporary possession for both NGET and for Western Power Distribution (South West) plc ('WPD'), which is also an undertaker in respect of aspects of the HPCC DCO. The two green corridors depicted on the extracts from the HPCC DCO land plans represent both NGET electricity transmission assets and WPD electricity distribution assets. Where these corridors cross the Proposed Development disused railway, the westernmost green corridor represents a 400kV overhead line easement corridor (which overhead line will be operated by NGET) and the easternmost green corridor represents a 132kV underground cable corridor (to be operated by WPD). (These two distinct works corridors and their centre lines can be seen more clearly on the extract from the works plans at Appendix 1). However, it remains true to say that NGET have powers of compulsory acquisition and/or temporary possession over all of the plots in the HPCC DCO, even where the intention is for WPD to exercise its CA powers in respect of its own infrastructure built under the HPCC DCO.</p>	
TR040011-001505-003			<p><i>Q: "The focus of the comments received has been on where the overlap between the Hinkley C Connector DCO would interface with the Proposed Development. However, the BoR [REP5-018] lists a further 50 plots along the line where NGET is listed as either having a Category 1 or Category 2 interest. As currently drafted schedule 16 of the dDCO contains a general Protective Provision (Part 2) that would protect electricity, gas, water, petroleum and sewerage undertakers are NGET satisfied that this would protect their assets/ equipment/ land interests</i></p>	<p>2.4 The Applicant believes that its more specific drafting of protective provisions better represents the situation likely to arise here, where two projects' construction timetables will overlap. Specifically the Applicant's protective provisions at paragraph 95 of Schedule 16 Part 8 of the draft DCO (Doc 3.1, Examination Library ref: Rep7-006) require the parties to co-operate and seek to work together.</p>

No.	Type / Category	Response topic	Response	Applicant's response
			<p><i>elsewhere along the route? If not why and what protections would NGET be seeking in relation to these plots? If NGET consider that a bespoke Protective Provision for these plots would be necessary provide the relevant drafting."</i></p> <p>2.4 The proposed PPs which NGET submitted at deadline 4 [REP4-046] were not specific to the interests acquired or assets constructed under the HPCC DCO. Although the proposed PPs do reference the HPCC DCO at one place (paragraph 5(1)), they are general in nature and intended to protect NGET's assets/equipment/land interests wherever they may occur along the route of the Proposed Development.</p> <p>2.5 However, the ExA is correct that the focus of the discussion has been on where the route of NGET's overhead lines constructed under the HPCC DCO crosses the Proposed Development (i.e. at sheet 2 of the Applicant's land plans). NGET believes that with a few exceptions detailed below, many of the "further 50 plots along the line where NGET is listed as either having a Category 1 or Category 2 interest" do not represent actual subsisting land interests or assets owned by NGET.</p>	2.5 The Applicant is grateful for the clarification, which reflects the Applicant's understanding of the other plots being historic interests.
TR040011-001505-004			<p>2.6 NGET is listed in the Applicant's Book of Reference as having a land interest in plots appearing on the following sheets of the Applicant's land plans. NGET comments on the extent of its actual interests as follows:</p> <p>2.6.1 <u>Sheet 1</u> – This sheet depicts the centre of Portishead and NGET is listed as having "rights of a road bridge" and "rights of drainage" in respect of several plots, and as having apparatus in respect of plot 01/35. NGET is not aware of having any current assets or land interests in these plots. NGET suspects that the rights over a road bridge and drainage rights may be</p>	2.6.1 The Applicant is grateful for the clarification.

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			historic rights belonging to the Central Electricity Generating Board related to what was the Portishead B Generating Station, which was demolished in 1982.	
TR040011-001505-005			2.6.2 <u>Sheet 2</u> – As mentioned previously, this sheet is the main interface between NGET's HPCC DCO and the Proposed Development. NGET clearly has many and varied interests in several plots here as detailed on the plans provided in response to the previous question and attached at Appendix 1 and Appendix 2.	The Applicant agrees this is the location of the main interface.
TR040011-001505-006			2.6.3 <u>Sheet 3</u> – NGET is listed as having an interest in several of the plots on sheet 3 in connection with options for easements. NGET did have option agreements to acquire easements with landowners of these plots in relation to the Hinkley Point C Connection Project ('HPCCP'), however these options are now no longer exercisable and/or the agreements have been terminated. The reason for this is that when the application was made for the HPCC DCO, two alternative routes for the Project along the northern part of the route were put before the Secretary of State – Route Option A and Route Option B. The Secretary of State decided on Route Option B. However, the option agreements entered into in respect of this land prior to the Secretary of State's decision related to Route Option A. NGET believes that these interests may have been noted in the Applicant's BoR because notices may still appear on the HM Land Registry titles relating to these option agreements. However, NGET no longer has any interest in these plots.	The Applicant included the interest for the reason given by NGET and is grateful for the clarification.
TR040011-001505-007			2.6.4 <u>Sheet 4</u> – NGET no longer has an interest in any of the plots on sheet 4 for which it is listed as having an interest, for the same reasons as given above for the sheet 3 plots. These interests all belong to 'Route Option A' option agreements which are either no longer exercisable or have been terminated.	The Applicant included the interest for the reason given by NGET and is grateful for the clarification.

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TR040011-001505-008			<p>2.6.5 <u>Sheet 5</u> – On this sheet NGET have rights for the use, in connection with the HPCCP, of an access track depicted, broadly speaking, as the land shaded blue, coming off Marsh Lane, running adjacent to and north of the disused railway and then extending off to the northeast. This is a subsisting land interest and to that extent NGET would expect any PPs included in the Order for its benefit to apply to this interest. However, NGET are listed in the Applicant's Book of Reference as having an interest in many plots of land to either side of this access track, in which NGET does not in fact claim any interest. Although it is difficult to discern with clarity, the access track itself is perhaps comprised of plots 05/100; 05/107; and most of plot 05/112. NGET may have access rights over parts of 05/95; 05/105; 05/106 & 05/108 as well, to the extent that they form part of the access track also. NGET does not have an interest in the remainder of the land on this sheet not forming part of the access track.</p>	<p>The Applicant included NGET's interest in the additional plots because the interest is registered on the wider extent of the title. Again the Applicant is grateful for the clarification. The Applicant has discussed the shared use of the Marsh Lane Access track with NGET and will continue to liaise with NGET regarding how the parties will work together.</p>
TR040011-001505-009			<p>2.6.6 <u>Sheet 6</u> – NGET is listed as having an interest in plots 06/25 and 06/61, but NGET does not believe it has any such interest.</p>	<p>The Applicant included NGET's interest in the additional plots because the interest is registered on the wider extent of the title. Again the Applicant is grateful for the clarification.</p>
TR040011-001505-010			<p>2.7 In summary then, there are many entries listed in the Applicant's BoR that do not accurately reflect NGET's current interests, and NGET only has 'live' interests in two of the six sheets listed above – sheets 2 and 5. All subsisting NGET interests on those sheets relate to the HPCC DCO, being land interests acquired by agreement, or subject to powers of compulsory acquisition or temporary possession under the HPCC DCO, or both (as is the case with some plots in the ownership of Mr Crossman on sheet 2). As stated above, NGET's proposed PPs are general in nature, and not intended to be specific to land interests acquired, or assets constructed, in connection with the HPCC DCO. However, since all of the subsisting interests in the Applicant's BoR do relate to the HPCC</p>	<p>The Applicant believes its own protective provisions better addresses the position that both projects will be carrying out works at the same time in the vicinity of Sheepway.</p> <p>The Applicant believes that the absences of existing NGET apparatus means there is not a need to protect non-HPCC assets of NGET if none are present within Order Land.</p>

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TR040011-001505-011			<p>DCO in some way, it is a moot point whether alternative PPs would be more appropriate to protect other 'non-HPCCP' assets and land interests.</p> <p>3 ExA's Questions for NGET and the Applicant</p> <p><i>Q: "NGET in their D6 submission [Para 2.6, REP6-039] refer to the fact that they have served notice regarding TP of a number of plots. Having checked the BoR [REP5-018] unlike all the other plots referred to by NGET, NGET are not listed as having an interest in plots 02/86 and 02/130. Can you confirm if NGET does have an interest in these plots and if so amend the BoR accordingly?"</i></p> <p>3.1 NGET have been liaising with the Applicant to confirm whether or not the temporary possession notices served under Article 29 of the HPCC DCO encroach onto plots 02/86 and 02/130.</p> <p>3.2 In relation to plot 02/130, NGET do not have an interest over the entirety of this plot. The HPCC DCO plot 183 of Section F (which can be seen at Appendix 1) crosses over the old railway and appears to clip 02/130 on the western edge of 02/130. There is no HPCCP apparatus proposed to be constructed here, but the plot is intended to be used for permanent access in the HPCC DCO. NGET believes that the Applicant's BoR should be updated to include an NGET interest over (a small part of) plot 02/130.</p> <p>3.3 In relation to plot 02/86, NGET had believed that there was some interaction with plot 137 of Section F of the HPCC DCO land plans, over which a temporary possession notice has been served. However, on closer inspection it appears that there is no overlap between plot 137 and the Applicant's plot</p>	<p>3.1 agreed.</p> <p>3.2 The Applicant's Book of Reference has been updated</p> <p>3.3 The Applicant notes NGET's interpretation but the Book of Reference has been updated to include NGET.</p>

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			02/86. NGET therefore does not believe it has an interest in 02/86.	
TR040011-001505-012			<p><i>Q: "To enable the ExA to better understand the overlap between the two schemes provide a plan showing the Hinkley C Connector plots and the Portishead plots overlaid with the plots coloured to show the powers being sought."</i></p> <p>3.4 NGET have been liaising with the Applicant and their land referencers Ardent and have provided the necessary mapping files relating to the HPCC DCO, where it crosses the Applicant's proposed MetroWest scheme on sheet 2 of the Applicant's land plans [REP5-003], in order that the Applicant may produce a plan showing the information requested by the ExA.</p> <p>3.5 The Applicant will be submitting this plan with their deadline 7 response to the ExA's questions, a copy of which has been seen and approved by NGET.</p>	3.4 and 3.5 The Applicant is grateful to NGET for its cooperation.
TR040011-001505-013			<p><u>4 Commentary on the Applicant's proposed PPs</u></p> <p>4.1 NGET and the Applicant have been in communication regarding the issue of whether NGET should have the benefit of protective provisions included on the face of the Order, if made. It would appear that the Applicant now accepts both that section 127 of the Planning Act 2008 is engaged with respect to (at least some of) NGET's land interests where they interface with the Proposed Development land, and also the principle that protective provisions for NGET should be included in the Order, if made. NGET is grateful to the Applicant for this recognition.</p>	<p>4.1</p> <p>Agreed. It would appear that NGET accept that, if the protective provisions (PPs) proposed by them are included in the Order, there would be no substantial detriment to their undertaking.</p> <p>Whilst the Applicant accepts the principle that PPs should be included in the Order, the Applicant submits that PPs proposed by NGET are unnecessarily restrictive and that those proposed by the Applicant are appropriate and sufficient to protect NGET's undertaking.</p>

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				<p>The relevant extracts of the HPCCP decision letter and Examiners Report are set out at Appendix 1 and links to the decision letters provided. The Applicant notes:</p> <ul style="list-style-type: none"> • The examiners' report was issued in October 2015 and the Secretary of State's decision in January 2016. Though at that time the MetroWest proposals had begun to be worked up and a DCO application was in prospect, it was still at an early stage. There was at that time therefore considerable uncertainty as to when MetroWest would proceed and the exact amount of interface there might be between the construction of the two projects on a practical level. • It was therefore reasonable at that time for the HPCCP project to be consented without the need to take account of the fact that the two projects might be constructed at the same time. • The decision letter (para 114) acknowledges that the decision was made in the context of the stage of the planning process at which MetroWest then was. The decision makes it clear that consideration of the interface between the two projects could and should be deferred until the second DCO when all the details of the later project are known: <p><i>“consideration has been given to the stage in the planning process at which the Portishead railway line application is at and whether the Order proposed would necessarily prevent the promotion of the railway project. The Secretary of State considers that it would be possible for a</i></p>

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				<p><i>future DCO to vary an existing DCO, if necessary for the later project. That decision, though, is for consideration in the context of the later project, when all details of that later project are known"</i></p> <ul style="list-style-type: none"> • As envisaged by the Secretary of State in the decision letter, the details of MetroWest are now known and it is appropriate and necessary for the interface between the two projects to be considered in the light of the fact that, if consented, MetroWest will be constructed at much the same time as HPCCP. • The proposed PPs seek to recognise that co-operation is needed between the parties to secure that both projects – each of national significance promoted by responsible public bodies – can be constructed side by side and the interface between them is fully known and managed and to avoid a race between the projects to be "first" which would not benefit either promoter or be in the public interest.
			4.2 However, NGET understands that the Applicant is not proposing to include NGET's suggested PPs in the Order, but is instead proposing to include its own 'mutually beneficial' PPs in the Order.	Agreed. See above
			4.3 The Applicant stated in its 'Oral Case and response to Representations at Compulsory Acquisition Hearing 2 (CAH2)' [REP6-022 p30] submitted at deadline 6 that "The Applicant will provide its own suggested protective provisions to NGET shortly and provide the Panel with an update at Deadline 7".	Agreed.

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			4.4 Womble Bond Dickinson sent an initial draft of its suggested PPs (the 'Applicant's PPs') to NGET's solicitors on 31 March 2021, stating that they were sent without client instructions. NGET received confirmation on 11 April 2021 that this initial draft had met with client approval from the Applicant. We are anticipating that these suggested PPs, or PPs to substantially like effect, will be submitted to the ExA at deadline 7, as part of a revised dDCO. We append a copy of the Applicant's PPs as they have been sent to us at Appendix 3.	Agreed.
			4.5 NGET respectfully maintains (subject to what is said below) that its own PPs submitted at deadline 4 [REP4-046] should be included within the MetroWest Phase 1 Order, if made, and that the Applicant's PPs are not appropriate in several important respects. NGET continues to engage in dialogue with the Applicant over the suitable forms of protection for both the HPCCP and the Proposed Development. However, in light of the fact that NGET will not have a further opportunity to respond in the examination process after deadline 7, and in order to assist the Panel on coming to a view about whether PPs on the face of the order are merited, and if so what form they should take, NGET provides initial commentary on the Applicant's PPs as follows. Where specific provisions of the Applicant's PPs differ from NGET's proposed PP's and we have not commented on that provision below, this should not be taken to mean that NGET thereby agree to that specific provision.	Agreed. Constructive discussions are continuing between the parties with a view to achieving a detailed agreement to manage the interface between the projects. A number of meetings have been held, most recently on 16 April 2021. Going forward, a programme of regular meetings has been scheduled including meetings on a technical level (to work out the practicalities of co-operative working) followed by meetings between lawyers to prepare the agreement.
			4.6 The Applicant's PPs are titled, 'For the Mutual Protection of National Grid and the Railway Undertaker'. The 'railway undertaker' is defined as 'the undertaker as defined in article 2 of this Order and, in relation to property owned by Network Rail, Network Rail'. NGET notes that there are already extensive Protective Provisions at Schedule 15, Part 4 of the HPCC DCO for the protection of Network Rail ('NR') and its	The PPs for NR in the HPCC DCO only extend to NR's current operational railway. For the reasons mentioned above, it was decided that PPs should not be included in the HPCC DCO to cover the new railway and railway works. The position has now changed and mutual protection is needed to enable both projects to be constructed to take account of each other.

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			property. NGET's exercise of its powers under the HPCC DCO must be carried out subject to those PPs with respect to the railway property of Network Rail. NGET fails to see why NR needs further protection in the form of the Applicant's 'mutual' PPs.	
			<p>4.7 Paragraphs 4 and 19 of the Applicant's PPs would have the effect of amending the HPCC DCO, such that the HPCC DCO would take effect subject to the Applicant's PPs and the Applicant would be afforded the protection of the PPs in the HPCC DCO for the benefit of NR. NGET consider this to be unacceptable. At the time of the examination for the HPCC DCO, North Somerset Council argued that it should be entitled to PPs in the HPCC DCO, such that land for the disused Portishead branch line should be afforded the same protection in the HPCC DCO as operational railway land in the ownership of NR.</p>	<p>4.7 – It is accepted that paragraphs 4 and 19 of the Applicant's proposed PPs would have the effect of amending the HPCC DCO. This is intended to take account of the facts as they now are, namely, that the key overground works for the HPCC scheme have not yet been constructed and that the detail of their design and the programming of the works should properly be the subject of discussions between the parties. In that way sensible adjustments to both sets of works can be made in order, far as reasonably practicable, to avoid or manage possible conflicts between the two projects.</p> <p>The Applicant's preferred PPs draw an important distinction between NGET's existing apparatus and apparatus which has yet to be installed. In the case of existing apparatus, it is accepted that MetroWest must make all adjustments necessary to accommodate the apparatus. In the case of proposed apparatus, there is an opportunity for the parties to arrange matters so as to facilitate the implementation of both projects with the consequential saving of public money in the public interest.</p>
			<p>4.8 It should be noted in this regard that the ExA's recommendation report and the Secretary of State's decision firmly rejected the inclusion of PPs for the benefit of North Somerset Council in the HPCC DCO. Appendix 1 of NGET's deadline 6 submission ('Written Summary of oral case put at CAH2' [REP6-039]) sets out the relevant extract of the ExA's report and the Secretary of State's decision letter.</p>	<p>Paragraphs 4.8 to 4.10 – the submissions do not give sufficient weight to the fact that, as mentioned above, the Secretary of State's decision letter stated that consideration had been given to the stage in the planning process reached by MetroWest at that time. The decision letter specifically envisaged that the interface of the two projects would be considered at a later</p>

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				stage when the details of MetroWest were known; and that the first DCO could if necessary be amended by the second one.
			<p>4.9 The reasoning of the ExA in the recommendation report bears repeating:</p> <p>4.9.1 "If the [Portishead branch] railway is built first, the protective provisions within the [HPCC] DCO would automatically operate for its protection, assuming the railway formed part of NRIL's network. However, if the railway is not built first, treating it as operational railway land at this stage would place a disproportionate burden on [NGET] in terms of the design and operation of the proposed development to accommodate the railway proposal together with the associated costs." [Para 8.5.67]</p> <p>4.9.2 "The Panel concludes that, in the light of the protective provisions that would be included in the recommended DCO for operational railway land, and the stage that the new railway project has reached in the development process, the powers under the DCO should not be restricted in the manner suggested by NSC. It is not necessary or appropriate to include new or additional protective provisions for the benefit of NSC, or the proposed railway within the [HPCC] DCO." [Para 8.5.68]</p> <p>4.9.3 "In reaching this conclusion, we have taken into account the fact that the new railway line would also be promoted as a nationally significant infrastructure project, and the public benefit associated with that scheme " [Para 8.5.69]</p>	See response above

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			<p>4.10 The Secretary of State's decision letter noted the recommendations of the ExA above, and also said:</p> <p>4.10.1 "...The Secretary of State agrees with the ExA's conclusion that the powers in the [HPCC] Order should not be restricted in the manner suggested by North Somerset Council and that new or additional protective provisions in the Order are not necessary..." [Para 114]</p>	
			<p>4.11 Whilst the Secretary of State did note that it is "...possible for a future DCO to vary an existing DCO, if necessary for the later project...", it is incumbent on the Applicant to explain why it thinks that the situation has changed in any fundamental respect, in terms of the chronological priority of the two schemes, or why the reasoning of the ExA in their recommendation report above, endorsed by the Secretary of State, no longer holds water. As stated in our deadline 6 submission, HPCCP is an already consented scheme the construction of which is well underway, whereas the Applicant's scheme is yet to be consented. Even assuming that it receives development consent later in 2021, the fact remains that the NGET apparatus in the Sheepway area (i.e. on sheet 2 of the Applicant's land plans) will be built well in advance of the Applicant's railway becoming operational, with pylons either side of the railway land for the 400kV overhead line due to be constructed in July 2022. As stated by the ExA, and given that the railway will not be built first, "treating it as operational railway land at this stage would place a disproportionate burden on [NGET] in terms of the design and operation of the [HPCCP] to accommodate the railway proposal together with the associated costs". NGET still fully agrees with the ExA's reasoning, and rejects the amending of the HPCC DCO to give the Applicant the benefit of NR's PPs and the treating of the</p>	<p>The "chronological priority of the two schemes" has changed significantly since the Examiners' Report in October 2015. While it is true that the making of the HPCCP DCO is before the making of this Order (assuming it is made), the period for implementation of each of the Schemes is programmed to proceed at much the same time.</p> <p>While protection for the operation of the new railway route is also relevant, provisions to ensure that the parties work together to avoid/minimise any conflicts are needed to safeguard the earlier construction stage.</p> <p>If the DCO Scheme is consented, surveys and ecological works will be carried out from January 2022. It is anticipated that preliminary works such as the creation of compounds, haul roads and lifting of old track will begin from July 2022. It is anticipated that the principal works will begin in the Autumn of 2022.</p> <p>It is understood that on the current programme, the HPCC tower is due to be commence in Quarter 1 of 2022 and the HPCC works will continue until about August 2023.</p> <p>While the programmes for both projects may be subject to change, it is clear that it is likely that there will be overlap which</p>

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			disused railway land as operational railway land from day 1 of the Order.	will require careful co-ordination. It is in the public interest that reciprocal arrangements are in place for the parties exchange early information about the design of their respective works and works programmes. In this way adjustments can be made which will prevent conflicts arising later. The Applicants' proposed PPs are intended to make that provision.
			<p>4.12 In paragraph 2, 'Interpretation' of the Applicant's PPs, there is a new defined term 'existing apparatus' introduced, which is defined as "apparatus which is sited in, over, or under land on 19 April 2021 and belonging to or maintained by National Grid on that date [and] "existing electricity tower" shall be construed accordingly". Paragraphs 9, 11 and 12 (which correspond to paragraphs 6, 8 and 9 of NGET's PPs submitted at deadline 4) are then re-written so that the protections afforded to NGET apparatus are only afforded to 'existing apparatus'. These paragraphs relate to the removal and relocation of NGET apparatus, the protection of retained NGET apparatus, and the expenses associated with the protection of NGET apparatus.</p>	<p>The reasoning underlying the distinction drawn between existing apparatus and proposed apparatus is explained above.</p> <p>The Applicant's proposed PPs afford different protection for proposed apparatus to be constructed under the powers of the HPCC DCO.</p> <p>Protection for the proposed apparatus</p> <p>Paragraph 18 requires NR/NSC 56 days before commencing any of the relevant authorised development to provide NGET with the same details of the works as required in NGET's PPs.</p> <p>NGET then have the same rights to approve the plans etc, to require modifications and specify protective works as apply in relation to "existing apparatus". There are no provisions for the removal and relocation of the proposed apparatus because, with co-operation between the parties this will not be necessary.</p> <p>Protection for the railway works</p> <p>Paragraph 106 of Schedule 16, Part 8 of the draft DCO requires NGET to give NR/NSC plans and details of any proposed HPCC development as soon as reasonably practicable after the making of the Order and in any event no later than 70 days before the start of construction. The long lead in time is intended to enable NR/NSC to have the necessary information</p>

No.	Type / Category	Response topic	Response	Applicant's response
				<p>as regards the proposed HPCC works to enable them to take account of the works in finalising designs and plans of the railway works.</p> <p>The provisions in the PPs for railway interests in Part 4 of Schedule 5 to the HPCC DCO are then applied which enable NR to approve plans, require modifications and protective works. Those provisions could be set out in full in the PPs but it is thought that it is simpler for the same PPs rather than having to make a distinction between the operational railway and the works.</p> <p>Unlike the case of existing apparatus, no provision has been made for payment by NSC of NGET's costs and expenses and the payment of compensation in connection with the interface of the two projects. This reflects the fact that it is NGET who is coming to land owned by the railway promoter and potentially interfering with the use by NSC of its land.</p> <p>This contrasts with the case where development interfere with apparatus which is already on the land. In each case it should be for the developer who disrupts the existing status quo to bear those expenses.</p>
			<p>4.13 The Applicant is thus proposing to include NGET's standard form of PPs in the Order, but is then in effect saying that they will not apply to any apparatus constructed after the close of the examination on 19 April 2021. Given that the NGET 400kV overhead line authorised by the HPCC DCO and crossing over the disused railway is yet to be constructed (although due to be constructed prior to the Proposed Development), it is difficult to see this arbitrary cut-off date as anything other than</p>	<p>The purpose of making the date the end of the examination period is to promote the early exchange of information between the parties so that each party can make any changes necessary or desirable to accommodate the other's project. Given the advanced stage of the MetroWest project it would not now be appropriate for NGET to proceed with the HPCC works without taking account of the railway works only to later require that the HPCC works must be relocated or that</p>

No.	Type / Category	Response topic	Response	Applicant's response
			an attempt to render the PPs ineffective from NGET's point of view in relation to HPCCP apparatus.	<p>protective works are required all of which could have been avoided had there been collaborative arrangements.</p> <p>In fact the parties are already engaging in detailed discussions and there is every prospect that detailed co-ordination arrangements will be agreed.</p> <p>The PPs reflect that it is in the public interest for there to be collaboration.</p> <p>As mentioned above, the Applicant's PPs do provide protection for proposed apparatus.</p>
			4.14 A primary purpose of protective provisions is surely to afford protection to the apparatus, operations and interests of statutory undertakers which are affected by the carrying out of an authorised development. Given that in the dDCO [REP6-008] the time limit for commencement of the authorised development is up to 5 years from the date of the Order (Requirement 2), is the Applicant arguing that adequate protection should not be afforded to a statutory undertaker's apparatus which is constructed (pursuant to its own earlier development consent) in between the end of the DCO examination but prior to the commencement of the authorised development (or more precisely, prior to authorised works commencing in the vicinity of that apparatus), which could be many years later?	<p>The point made by NGET disregards the realities of the situation. If the Order is made, MetroWest is programmed to begin in 2022.</p> <p>A mentioned above, in this case NGET are seeking PPs for development being carried out on the Applicant's land.</p> <p>NGET is in as equivalent position of a statutory undertaker negotiating terms for a wayleave/easement rather than that of a statutory undertaker who is seeking protection for existing apparatus.</p>
			4.15 NGET notes that there is no such distinction made between apparatus that is in situ prior to the end of the DCO examination and apparatus that post-dates the end of the examination in any of the other protective provisions that are included within the most recent dDCO [REP6-008].	<p>The position of NGET is unusual in that they have statutory powers to install apparatus and it is reasonable to make express provision to take account of that.</p> <p>If other utilities seek rights to install new apparatus over the Order land the terms of the rights will be negotiated and the</p>

No.	Type / Category	Response topic	Response	Applicant's response
				siting of the apparatus and the terms on which it can be installed will take account of the railway works.
			<p>4.16 NGET further notes that there are protective provisions for the benefit of WPD included at Part 7 of Schedule 16 of the dDCO. NGET wish to point out that there are already 132kV underground cables which have been constructed as part of the authorised works of the HPCC DCO and which already cross the disused railway at Sheepway, to the east of where NGET will be constructing its 400kV overhead line across the railway (see paragraph 2.3 above). These 132kV underground cables will form part of WPD's electricity distribution network. Although the terms of WPD's PPs in the dDCO differ in detail from the terms of NGET's proposed PPs, the Applicant seems prepared to accept the principle that WPD's apparatus built under the HPCC DCO should be afforded the protection of WPD's PPs included in the Order and that WPD should have its expenses met in accordance with those PPs. But the Applicant seems unwilling to accept that NGET's apparatus built under the same DCO, which will be in situ before the Proposed Development, should be afforded a like protection under NGET's proposed PPs and that NGET should have its expenses met in a like manner, merely because NGET's apparatus happens to be constructed after the arbitrary cut-off date of the end of the examination.</p>	<p>Most of WPD's apparatus under the powers of the HPCC DCO has already been installed and is known not to affect the railway works. It is therefore "existing apparatus". In addition there are several other substantial existing interfaces between WPD and the railway works which need to be catered for by the PPs for the protection of WPD.</p>
			<p>4.17 NGET notes that paragraph 18 of the Applicant's PPs seeks to reintroduce some measure of protection for NGET's HPCCP apparatus by making some of the provisions of paragraph 11 'Retained existing apparatus' applicable to that apparatus. NGET does not regard this as sufficient protection for its assets for two reasons.</p>	<p>See responses below.</p>
			<p>4.18 First, paragraph 18 does not afford NGET the protection for its assets contained in paragraph 9 'Removal of existing apparatus'. It is unclear from the Applicant's PPs whether paragraph 9 won't apply to NGET's HPCCP apparatus either (a)</p>	<p>The reason why the provisions relating to relocation are not applied to proposed apparatus is, as stated by NGET, that the reciprocal duties of the Applicant and NGET to work together will mean that the siting of the new NGET apparatus should</p>

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			because the Applicant wishes to reassure NGET that it will not seek to relocate its HPCCP apparatus, or because (b) the Applicant thinks it should retain the ability to seek relocate such apparatus when carrying out the Proposed Development but that the protections for NGET in paragraph 9 should not apply. Given that NGET anticipate the HPCCP apparatus to be in situ when the Applicant carries out its authorised works, NGET would be most reassured if it were afforded the protections of paragraph 9, even if relocation of NGET apparatus is likely to be avoided by cooperation between the parties ahead of the construction of such apparatus and of the Proposed Development.	take into account the MetroWest works. There should therefore be no need for NGET to require the relocation of their apparatus at the expense of the Applicant as provided by paragraph 98 of the Applicants protective provisions
			<p>4.19 Secondly, by making paragraph 12 'Expenses' applicable only to 'existing apparatus' and not to NGET's HPCCP apparatus, NGET are being asked to bear the costs of the steps necessary to protect their own assets even where it is accommodating a later scheme. Indeed, the position is even more back-to-front than this. By making the construction of NGET's own authorised works subject to NR's protective provisions in the HPCC DCO even where they are taking place on or over the Applicant's rather than NR's land (which seems to be the effect of paragraph 19 of the Applicant's PPs), NGET are in effect being asked to treat the disused railway land as operational railway land before construction of the Proposed Development has even started and furthermore to bear the Applicant's costs associated with protecting that land as if it were operational railway (see paragraph 38 of Schedule 15, HPCC DCO). NGET submits that this is entirely the wrong way round and is contrary to the ExA's and Secretary of State's reasoning at paragraphs 4.9.1 to 4.10.1 above.</p>	<p>As mentioned above the Secretary of State's decision in 2016 envisaged that the relationship between the HPCC works and the MetroWest works would be reconsidered "<i>in the context of the later project, when all details of that later project are known</i>".</p> <p>If the railway works are consented by the Order, there will be two projects of national significance, both consented by the Secretary of State as being in the public interest and both promoted by authorities in the exercise of public functions. The Applicant does not agree that the mere fact that the HPCC works were consented before the railway works is key to how the costs of accommodating each other's works should be apportioned between the parties.</p> <p>The protective provisions proposed by NGET seek to place the entire cost on the Applicant. This ignores the fact that the railway works, which (assuming this Order is made) will also be statutorily consented, will be carried out alongside the HPCC</p>

No.	Type / Category	Response topic	Response	Applicant's response
				<p>works, on land already acquired by the Applicant for the purpose of constructing the DCO Scheme.</p> <p>The Applicant accepts that on this principle the costs provisions in the provisions for railway interests in Part 4 of Schedule 15 to the HPCC DCO should not automatically be applied to the carrying out of the HPCC works. The Applicant considers that this is a complex matter which it is hoped will be agreed between the parties but in default should be determined by an independent arbitrator. The Applicant is therefore prepared to reconsider whether the protective provisions proposed for NGET have been revised accordingly.</p>
			4.20 In the Applicant's PPs the indemnity provision (paragraph 13 in the Applicant's PPs and paragraph 10 in NGET's suggested PPs) has been watered down in a manner which NGET find unacceptable.	The Applicant does not agree. The compensation provisions offered is in line with that offered to other statutory undertakers in paragraph 31 of Part 2 of Schedule 16 to the Order.
			<p>4.21 In their 'Oral Case and response to Representations at Compulsory Acquisition Hearing 2 (CAH2)' [REP6-022], the Applicant states at page 22 that "[At] Para 9 and 10 of [NGET's] PPs</p> <p>- 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". And again at page 28 "Para 9 [of NGET's PPs] – Expenses and Para 10 Indemnity. 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</p>	<p>Under the national compensation code, compensation for the compulsory acquisition of land seeks to put the landowner (in this case the Applicant) into the same position as they would have been in had the acquisition not taken place. This also includes the effect of the acquiring authority's scheme (in this case HPCC) on the value of land retained by the Applicant. A relevant factor is the effect of that scheme on the development proposed to be carried out by the landowner.</p> <p>This is not recognised by the NGET's protective provisions which seek, without qualification, to put the "adjustment costs" on the Applicant. In fact any restrictions sought by NGET which</p>

No.	Type / Category	Response topic	Response	Applicant's response
			out work. The Applicant does not accept that this provision is reasonable".	<p>affect the Applicant's ability to carry out its authorised development would, in the Applicant's capacity as landowner, need to be taken into account in determining the compensation payable under the compensation code.</p> <p>In these circumstances the Applicant cannot accept NGET's assumption that the Applicant should give NGET a full indemnity for any increased costs of the carrying out of their scheme.</p> <p>The Applicant must expressly reserve its position on its own compensation for land affected by NGET's proposed exercise of its power to acquire new rights and exercise of temporary possession powers, as well as any claim for injurious affection to the Applicant's land (and any other claim it may be entitled to under the Compensation Code following the exercise of powers and construction of the HPCC scheme by NGET).</p>
			<p>4.22 NGET do not follow the Applicant's reasoning in objecting to the indemnity provision in NGET's PPs. First, the fact that "NSC owns the freehold of the land" is irrelevant to the question of whether the Applicant should be liable or indemnify NGET for any damage caused to NGET apparatus, any interruption to NGET's supplies, or any third party claims made against NGET which arise as a consequence of the carrying out by the Applicant of the Proposed Development. Secondly, NGET does not see how the indemnity provisions would prevent the Applicant from claiming compensation from NGET for the exercise of HPCC DCO compulsory acquisition powers, or in any way "reverse the compensation code". The Applicant's rights as a claimant under the compensation code remain unaffected. The indemnity provisions in issue here are about potential loss</p>	See Applicant's responses above.

No.	Type / Category	Response topic	Response	Applicant's response
			or damage caused by the Applicant to NGET in carrying out the Proposed Development – nothing to do with exercise of compulsory purchase powers by NGET.	
			<p>4.23 NGET note that sub-paragraphs 13(5) & 13(6) (sub-paragraphs 10(5) & 10(6) of NGET's own proposed PPs) of the 'Indemnity' paragraph, which require the posting of acceptable security and the procuring of acceptable insurance by the Applicant prior to commencing construction, have been deleted by the Applicant in its PPs. The Applicant has stated that "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 [sic] and have its own Order to permit it to carry out works on its own land. [In] the circumstances of this Application, such provision must be totally inappropriate" [REP6-022 pp 22-23]. NGET think this is to misunderstand the purpose of sub-paragraph 13(6), which merely states that nothing in NGET's PPs prevent them from seeking injunctive relief (rather than positively enabling them to seek injunctive relief) if the Applicant fails to comply with sub-paragraph 13(5). NGET have no wish to obstruct or prevent the Applicant's Proposed Development from proceeding, subject to its own interests receiving proper acknowledgement. Nevertheless, NGET is quite prepared to consider again whether sub-paragraphs 13(5) & 13(6) should be included or whether some acceptable alternative wording could be agreed with the Applicant.</p>	The Applicant notes that NGET do not wish to obstruct or prevent the Applicant's proposed development from proceeding and welcome the suggestion that NGET may be prepared to reconsider the need for the provisions in paragraphs 10(5) and (6) of their proposed protective provisions.
			<p>4.24 The comments given above represent NGET's initial thoughts on the Applicant's PPs, and NGET reserve the right to comment further at a future date. NGET will continue in discussion with the Applicant over the appropriate form of PPs. But NGET submits that the Applicant's PPs are wholly insufficient to protect its interests as a statutory undertaker and</p>	As already stated, the Applicant considers that the protective provisions proposed by NGET exceed what is appropriate to protect their interests as statutory undertaker and that the provisions proposed by the Applicant are sufficient and appropriate for that purpose. However, as also mentioned above, constructive discussions between the parties are continuing which will include discussions on the protective

No.	Type / Category	Response topic	Response	Applicant's response
			that those interests would be more appropriately protected by its own proposed PPs, submitted to the ExA at deadline 4.	provisions and financial principles and it is hoped that agreement will be reached.
TR040011-001507-001	North Somerset Council	Response to the Examining Authority's request for information	<p>Request for further information</p> <p>ANNEX C</p> <p>Questions for the Applicant, North Somerset District Council (NSDC) and the Bristol Port Company (BPC)</p> <p><i>NSDC:</i></p> <p><i>1. Condition 16 of planning permission 16/P/1987/F [REP6-032] requires that 'the use of the site for the storage of cargo in transit (e.g. motor vehicles) shall not be commenced until a programme of works (including timescales) for the introduction and removal of the temporary at grade vehicle crossing and construction of vehicular bridge across the railway line so as not to impede the re-opening of the Portishead Branch line have been submitted (in consultation with MetroWest and Network Rail) to and approved by the Local Planning Authority'. Can you:</i></p> <p><i>(a) Confirm whether this condition has been discharged; and</i></p> <p>NSC does not have any record of having received an application to discharge condition 16. The Bristol Port Company accepts that this has been overlooked and we are in dialogue with BPC over how this omission can best be resolved.</p>	The Applicant will engage constructively with the local planning authority and BPC to resolve the position.
TR040011-001507-002			<p><i>(b) Provide details of the timescales for the removal of the at grade crossing and construction of vehicular bridge that were approved under this condition.</i></p> <p>The only detail concerning this is a statement within a Bridleway/Cycle Path Crossing Management Plan submitted by</p>	-

No.	Type / Category	Response topic	Response	Applicant's response
			the BPC in respect of condition 18 and this was discharged 29 June 2017. This document states: "Prior to the intended reopening of the Portishead Branch line, TBPC will stop using this 'at grade' crossing and will be required to build a bridge across the railway and bridleway in order to access the site. This bridge will accommodate the bridleway and cycle path by means of an underpass to the north of the railway for pedestrians, cyclists and horse riders.	
TR040011-001508-001	North Somerset Council	Recommended amendments to the draft DCO	<p>[For appended table, please see https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR040011/TR040011-001508-North%20Somerset%20District%20Council.pdf]</p> <p>Examining Authority's (ExA) Consultation Draft Development Consent Order (DCO): Schedule of ExA's recommended amendments to the Applicant's draft DCO submitted at Deadline (D)6 [REP6-008]</p> <p>I am writing to confirm that we have commented on the Applicant's response to the recommended amendments to the draft DCO submitted at Deadline (D)6 as set out in the attached document, which will also form an Appendix to the Statement of Common Ground between the Applicant and ourselves.</p>	-
TR040011-001509-001	Stuart Tarr on behalf of Ham Green and Chapel Pill Lane Residents	Pill Tunnel Eastern Portal Compound Access	<p>Portishead Branch Line MetroWest Phase 1: Schedule of ExA's Recommended Amendments to the Applicant's Draft DCO submitted at Deadline (D)6 [REP6 – 008]</p> <p>Residents have now had an opportunity to consider the ExA's recommended amendments in relation to Schedule 2 New Requirements regarding the Pill Tunnel Eastern Portal Compound Access and have instructed me to make a supplementary submission the effect of which is to vary my Deadline 6 submission of 15th March 2021.</p>	<p>The Applicant has not made the suggested changes and submits they are not needed.</p> <p>For the reasons explained in its Deadline 6 submissions, the Applicant does not agree that the surfacing proposed by the Interested Party is an appropriate one for Work No. 24.</p>

No.	Type / Category	Response topic	Response	Applicant's response
			<p>The submission is that pursuant to Schedule 2 Pill Tunnel Eastern Portal Compound Access recommended amendments the Planning Inspectorate should set a further condition requiring NSC (the Applicant for the MetroWest Phase 1 Project) to enter into an undertaking in perpetuity not to share or permit the use of or rights of way over any part of the Chapel Pill Lane site entrance or access track with any other user except the owner of the field and his agricultural contractors, the beneficiary of the Right of Way over the field and those to whom he grants permissive access, Network Rail and their contractors, rail accident emergency responders (the Police, Fire and Rescue Service, the Ambulance Service and emergency contractors), Government departments and their rail accident and safety inspectors (principally the Department of Transport and the Health and Safety Executive). In effect this would be a restrictive covenant the precise usage coverage and the drafting of which would need to be undertaken by lawyers.</p>	
TR040011-001509-002			<p>Residents have also asked me to emphasise that concrete cellular blocks should be used on all track and turning surfaces consistent with maintaining the openness and appearance of Green Belt where the gradient and conditions allow; that only exceptionally where it is operationally justified, for example on the steepest part of the track within the field, should tarmac be used.</p>	<p>The Applicant does not agree that the surfacing proposed by the Interested Party is an appropriate one for Work No. 24.</p>
TR040011-001509-003			<p>Residents believe that these requests are entirely consistent with WBD's (on behalf of the Applicant) submission: "there is a suggestion that the proposals for Work No 24 are an enabling work for the potential housing development at Chapel Pill Lane. This suggestion does not stand up to scrutiny [extract from WBD's email dated 1st March 2021]. And so, for that reason, there should be no difficulty in WBD on behalf of the Applicant</p>	<p>The Applicant does not agree that the surfacing proposed by the Interested Party is an appropriate one for Work No. 24.</p>

No.	Type / Category	Response topic	Response	Applicant's response
			(NSC for the MetroWest Phase 1 Project) accepting these conditions.	
TR040011-001509-004			Finally, residents have confirmed that they would be prepared not to pursue any previous requests for Hayes Mayes Lane to be used as an alternative means of access to the Pill Tunnel compound if these conditions are agreed, in order to protect the hedgerow, tree line and the important wildlife habitats within designated Green Belt that they provide. In addition, an assurance should be sought that MetroWest (Network Rail and its contractors) will have no future need to breach the hedgerow and tree line which provides an important buffer between Hayes Mayes Lane and Hart Close once access to the compound via Chapel Pill Lane subject to these conditions has been confirmed.	This is not a matter for this examination and the area is outside of Order limits. The applicant has therefore not amended the Order as proposed by the interested party and does not believe the suggestion is necessary or reasonably required.
TR040011-001510--001	National Trust	Counsel's opinion	<p>[For the Counsel's opinion referred to, please see https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR040011/TR040011-001510-National%20Trust%20-%20Response%20to%20Rule%2017.pdf]</p> <p>Further to the request for further information from Ms Dowling please find attached the Counsel's Opinion. The National Trust are in the process of agreeing an offer letter with North Somerset District Council which will be forwarded alongside the Statement of Common Ground by WBD.</p>	The Applicant is grateful to National Trust for providing the Opinion. Discussions with National Trust continue. A signed SOCG is now with the ExA.

Appendix 1 – Letter to Exolum's Solicitors, 19 April 2021

19 April 2021

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Our ref:
KJG1/PJB1/381278.1
Your ref:

Dear Sirs

EL Pipeline System Limited (EL)
Update on Protective Provisions Agreement

We refer to your letter to PINS dated 14 April 2021 and your client's Written Representation dated 12 October 2020. We set out responses to your points as follows:

Point in VWV letter to PINS dated 14 April 2021	Womble Bond Dickinson response
<p>EL does object to any acquisition of its apparatus or rights under any compulsory acquisition powers granted in the DCO.</p> <p>EL also objects to the grant of further rights and powers to carry out works which could compromise the safety and operation of its pipelines, in the absence of suitable protective provisions and without suitable provisions for recovery of costs.</p>	<p>Paragraph 74 of Schedule 16 would restrict the Applicant from acquiring any of EL's apparatus without EL's consent. However, this does not extend to EL's land.</p> <p>The Applicant notes that no freehold land of EL is within the Order Limits. Furthermore, the land scheduled for freehold acquisition land which EL holds an interest, and on which works will be constructed, is already owned by the Applicant.</p> <p>The freehold land to be acquired compulsorily (in plots 03/30, 03/32, 03/33) is sought for ecological mitigation purposes only.</p> <p>The Applicant has included protective provisions in the dDCO that it considers to be reasonable and suitable for the protection of EL's apparatus.</p>
<p>The draft DCO contains protective provisions relating to EL's apparatus, drafted unilaterally by the Promoter, which provide inadequate protection of EL's apparatus and rights.</p>	<p>The Applicant has taken into consideration the points made by EL in its written representation of 12 October 2020.</p> <p>The Applicant is also in receipt of EL's comments with respect to the separate agreement currently in negotiation between the two parties.</p>

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	<p>Schedule 1 to the Applicants' Section 127 position statement deals with each of the points expressed in EL's written representation. The Applicant does not agree that all of EL's preferences are necessary for the protection of EL's apparatus or appropriate to include in the protective provisions, and where this is the case, it has given reasons.</p> <p>The Applicant notes that since EL's solicitors' letter of 14 April, the Applicant has amended the protective provisions relating to EL's apparatus to cover two additional points from EL's written representation, namely:</p> <p><i>To ensure CLH is provided with sufficient notice and detail to assess any works that the Promoter intends to carry out within 15m of any part of CLH's apparatus, for example to determine whether protective works or monitoring of adjoining activities or works are necessary;</i></p> <p>and</p> <p><i>where considered necessary by CLH or the Promoter, to ensure tests are undertaken to determine any interference to cathodic protection</i></p> <p>These points are covered at paragraph 76(1) and 76(2) of Schedule 16 to the dDCO (ensuring sufficient notice) and paragraph 76(8) (cathodic protection) respectively, and are discussed on page 19 of the Applicants' Section 127 position statement.</p>
We have not received any correspondence from PINS or the Promoter on the draft Protective Provisions since our objection and were not asked to provide any input on them in the examination.	<p>EL and the Applicant's focus during the examination has been to progress the agreement which is expected to shortly conclude.</p> <p>The protective provisions in the dDCO are informed by those discussions as well as EL's preferences expressed in its written representation.</p>
EL continues to engage and collaborate with the Promoter to negotiate the Agreement. Its terms are largely agreed between the parties, though a small number of outstanding points remain to be settled.	The Applicant agrees.
At this stage, EL is confident that the parties will be able to progress the Agreement to completion however we ask that PINS retains the issue of protection of EL's pipeline as a live issue pending resolution of the Agreement.	The Applicant agrees.
We ask that you set a further deadline for the Promoter to provide information to you on progress on the Agreement. If the Promoter will	The Applicant has no preference either way on this point but anticipates concluding the Agreement in due course.

not enter into the Agreement with EL, we will need to provide further submissions to you or directly to the Secretary of State for consideration.	
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We emphasize our client's willingness to continue and conclude negotiations in respect of the private agreement between the parties and anticipate that this agreement will allay all of EL's outstanding concerns. In the event that the agreement does not conclude the dDCO contains bespoke provisions that are sufficient for the protection of EL's apparatus.

Yours faithfully



Womble Bond Dickinson (UK) LLP

Appendix 2 – Extracts from National Grid (Hinkley Point C Connection Project) Order 2016

NATIONAL GRID (HINKLEY POINT C CONNECTION PROJECT) ORDER 2016

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020001/EN020001-000001-160119%20FINAL%20DL.pdf>

Extract from decision letter of the Secretary of State issued 16 January 2016

North Somerset Council

109. The Secretary of State notes that North Somerset Council raised an objection to the compulsory acquisition powers sought due to the impact it could have on an Nationally Significant Infrastructure Project (“NSIP”) application they are involved in promoting with regards to the re-opening of the Portishead to Parson Street, Bristol Railway line (“the Portishead Railway”). The Secretary of State notes that this is due to be submitted to the Planning Inspectorate in Q2 2016.

110. If re-opened it is intended that this scheme would become part of the National Rail network and subject to the terms of NRIL’s operating licence with the title of the track bed likely passing to NRIL. It was anticipated that should Development Consent for the Portishead Railway be granted, works would start on site in late 2017 and the railway would be operational by 2019. North Somerset Council therefore objected on the grounds that the acquisition rights sought would be incompatible with an operational railway. North Somerset Council requested that it be assumed that an operational railway is in place and that protective provisions be included in the Order or in an agreement put in place outside the Order accordingly. This position was supported by NRIL and by North Somerset District Council, Bristol City Council, South Gloucestershire District Council and Bath and North East Somerset Council (“the MetroWest Councils”) in a letter to the Secretary of State following the close of Examination.

111. The Applicant highlighted that the land in question is not currently operational railway land and that the terms NRIL would ordinarily impose on crossings of existing railway would not be appropriate. The Applicant noted that if the railway is built, the protective provisions within the Order would automatically apply for its protection assuming the railway formed part of NRIL's network. However, if the railway is not built, such an assumption would place an unduly onerous burden on the Applicant who would be required to deliver their Development around a railway that would not exist and would be required to bear the associated costs.

112. In addition, the Applicant highlighted that where a new transmission line crosses existing operational railway, National Grid would usually be expected to bear the cost and risk associated with design compatibility. In contrast, where a new railway line crosses an existing transmission line, it would usually expect the railway developer to bear the cost and risk associated with design compatibility.

113. The ExA agreed with the Applicant that if the railway is built first, the protective provisions within the Order with regards to NRIL would automatically operate for its protection, assuming the railway formed part of NRIL's network. However, if the railway is not built first, treating it as operational railway land at this stage would place a disproportionate burden on the Applicant in terms of the design and operation of the proposed development to accommodate the railway proposal together with the associated costs.

114. Whilst the Secretary of State notes the importance of promoting new infrastructure projects and that the Portishead Railway scheme has the support of the MetroWest Councils and the Local Enterprise Partnership, consideration has been given to the stage in the planning process at which the Portishead railway line application is at and whether the Order proposed would necessarily prevent the promotion of the railway project. The Secretary of State considers that it would be possible for a future DCO to vary an existing DCO, if necessary for the later project. That decision, though, is for consideration in the context of the later project, when all details of that later project are known. The Secretary of State agrees with the ExA's conclusion that the powers in the Order should not be restricted in the manner suggested by North Somerset Council and that new or additional protective provisions in the Order are not necessary. Consequently, the Secretary of State considers that the future promotion of the Portishead Railway scheme, and the need for that project to seek development consent under the Planning Act 2008, is not a sufficient reason to preclude the making of the current DCO as recommended in relation to this matter by the ExA.

https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020001/EN020001-004121-151019_EN020001_HPCC_ExA_Report_to_SoS_Main_Report.pdf

North Somerset Council - Objection No 41

8.5.62 The North Somerset Council (NSC) is scheduled in the BoR as registered proprietor of a number of plots which form part of the title to the former Portishead railway line. For the majority of the plots, the Applicant seeks permanent powers of new rights over land, including access at ground level. The NSC objects on the grounds that the rights sought would be incompatible with an operational railway. It seeks terms that would be appropriate when granted by NRIL for crossings of railway infrastructure by the Applicant's apparatus.

8.5.63 It is intended that the DCO application will be submitted to the Planning Inspectorate in June 2016. If consent is given, then it is anticipated that works would commence in late 2017 and the railway would be operational (and become part of NRIL's network) by 2019. The NSC seeks to have in place, either in the DCO or in an agreement outside of the DCO, protections for the land as if it was operational railway land. These protections also need to apply for maintenance following the reinstatement of the railway. NRIL supports the position of the Council in relation to protective provisions for the former Portishead railway line.

8.5.64 The draft DCO contains detailed protective provisions for the benefit of NRIL. This means that any interests NRIL might acquire in new operational railway and associated land would benefit from those protective provisions. However, given that the land is not currently operational railway land, the Applicant does not agree that the terms NRIL would ordinarily impose on crossings of existing railways would be appropriate, particularly where those terms relate to commercial matters or the allocation of risk associated with such a crossing.

8.5.65 The Applicant's Position Statement submitted at Deadline 7 [Doc 8.34.3] confirms that it agrees, and accepts, that the proposed development should accommodate the future re-opening of the railway and is in discussions with NSC to agree terms to achieve this. It would clearly be in both parties' interests

that agreement is reached, as otherwise NSC might in future seek powers in respect of the Applicant's land interests, or the proposed development, when pursuing its own application for development consent.

8.5.66 Nonetheless, the Applicant states that where a new transmission line crosses existing operational railway, it is usually expected to bear the cost and risk associated with design compatibility. In contrast, where a new railway line crosses an existing transmission line, it would usually expect the railway developer to bear the cost and risk associated with design compatibility. The Panel does not consider that it would be reasonable or proportionate for the Applicant to meet the full costs associated with design compatibility for this land having regard to the stage that NSC's project has reached in the development consent process.

8.5.67 If the railway is built first, the protective provisions within the DCO would automatically operate for its protection, assuming the railway formed part of NRIL's network. However, if the railway is not built first, treating it as operational railway land at this stage would place a disproportionate burden on the Applicant in terms of the design and operation of the proposed development to accommodate the railway proposal together with the associated costs.

8.5.68 The Panel concludes that, in the light of the protective provisions that would be included in the recommended DCO for operational railway land, and the stage that the new railway project has reached in the development process, the powers under the DCO should not be restricted in the manner suggested by NSC. It is not necessary or appropriate to include new or additional protective provisions for the benefit of NSC, or the proposed railway within the DCO.

8.5.69 In reaching this conclusion, we have taken into account the fact that the new railway line would also be promoted as a nationally significant infrastructure project, and the public benefit associated with that scheme. We do not find that the matters raised would, in themselves, preclude the exercise of the compulsory acquisition powers sought. We shall weigh them in the balance in our overall conclusions, later on in this chapter.