

# **THE M4 CORRIDOR AROUND NEWPORT PUBLIC LOCAL INQUIRY**

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## **SUMMARY PROOF OF EVIDENCE**

Matthew Kennerley

## **ASSOCIATED BRITISH PORTS**

Principal Witness

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**1. QUALIFICATIONS AND EXPERIENCE**

- 1.1 My name is Matthew Kennerley. I am the Regional Director for Associated British Ports South Wales (or ABP). I am responsible for the Ports of Newport, Cardiff, Barry, Port Talbot and Swansea and have worked in the ports industry for over 27 years.
- 1.2 My role on a daily basis comprises the strategic management and leadership of the South Wales region.

**2. SCOPE OF EVIDENCE**

- 2.1 This is a summary of my Proof of Evidence – it should be read in conjunction with my full Proof of Evidence in order to obtain a complete picture of my evidence.
- 2.2 My evidence introduces ABP, the Port of Newport and the history of the M4 proposals. It then explains ABP's objection to the M4 proposals, the serious detriment it will have on the Port and considers alternatives to the WG scheme.

**3. ABP AND ITS PORTS**

- 3.1 ABP is the UK's leading port operator. We own and operate 21 separate ports across England, Wales and Scotland. Each is an individual statutory undertaking, although ABP is the statutory undertaker in each case.
- 3.2 ABP's ports handle around 100 million tonnes of cargo per annum including more than 30 million tonnes of exports. Around 84,000 jobs nationwide are supported by ABP and our customers. Together with our customers, ABP contributes £5.6 billion to the economy every year.
- 3.3 The Port of Newport is Wales' most important general cargo port. It currently supports directly or indirectly around 2,570 local jobs, contributing some £173 million annually to the local economy, detailed in the evidence of David Crockett.
- 3.4 For a variety of reasons which I outline, Newport is the port with the greatest growth potential in South Wales. This potential is being put at serious risk by WG's proposal to construct a motorway bridge at a height of around 25 metres through the middle of the Port with a junction built on land compulsorily acquired from ABP within our operational port estate.
- 3.5 ***ABP's Group Strategy*** - As regional director for ABP's South Wales Ports my primary role is to secure the implementation of ABP's group strategy across the

region. I am also a member of the ABP Harbour Board and therefore have a responsibility for the statutory duties of ABP.

3.6 Our group strategy encompasses the commercial development of all of our five Welsh ports in conjunction with our statutory obligations whilst also ensuring that the ports sector plays a role and has a voice in the wider community. I provide a brief introduction to each of ABP's Welsh ports (excluding the Port of Newport with which I deal below) – moving from the west to the east -

- a) ***The Port of Swansea*** – Furthest west in the region, the port handles a range of cargoes, including pulp imports, aggregates and cements, fertiliser imports, exports of coal and recyclables. Due to its location, Swansea's hinterland does not tend to stretch into the broader UK market.
- b) ***The Port of Port Talbot*** – The primary cargoes include up to 9mt per year of iron ore and coal for steel making. It is one of only three facilities in the UK capable of handling fully laden cape size vessels up to around 170,000 tonnes deadweight.
- c) ***The Port of Barry*** – The ports activity is focussed on the import and export of materials associated with the Dow Chemicals silicone plant in Barry. Significant areas around No1 dock have been redeveloped for residential, leisure and retail purposes with commercial activities continuing in No2 dock.
- d) ***The Port of Cardiff*** – The port handles a wide range of largely industrial commodities and cargoes in ships of up to 25,000 tonnes deadweight, including import of steel, timber, aggregates, fuel and chemical products. The Cardiff Container Terminal provides the only lift-on/ lift-off container facility in Wales servicing lines to Ireland and the Mediterranean.

#### **4. ABP'S POSITION REGARDING THE WELSH GOVERNMENT SCHEME**

4.1 It is ABP's view that the WG Scheme as proposed should not proceed, for the following reasons:

- a) The proposed compulsory purchase by WG and the compulsory creation of rights over land and water would result serious detriment to the port undertaking. The land to be compulsorily acquired cannot be replaced by other land belonging to or available for acquisition by the Port without serious detriment (section 16 of the Acquisition of Land Act 1981).

- b) The WG Scheme would interfere with the reasonable requirements of navigation over the waters within the Port. This is a consideration which is specifically required to be taken into account by the decision-maker under section 107(1) of the Highways Act 1980.
  - c) ABP's ability to carry out its statutory functions as Statutory Harbour Authority will be compromised if the scheme proceeds.
- 4.2 ABP does not consider that a compelling case for the inclusion within the WG Scheme of the Docks Way Link Road and associated junctions has been demonstrated.
- 4.3 ABP, therefore, objects to the WG Scheme as currently promoted.

#### ***ABP's Alternative Routes***

- 4.4 In so far as the underlying need can be demonstrated, ABP has identified two alternative routes,- 'Alternative Northern Route 1' (ANR 1) and 'Alternative Northern Route 2' (ANR 2). I believe these would better meet the stated objectives of the WG scheme. Whilst these two alternative routes will still cause serious detriment to the Port, ABP would be prepared to forego any reliance on the section 16 serious detriment test.
- 4.5 Both ANRs take a more northerly line across the Port, crossing the northern periphery of the operational port estate. The only difference between the ANR1 and ANR2 is that the first, ANR1, which is our preferred option, does not include a motorway junction – the need for which we consider has not been made. The second, ANR2, does offer a junction should it be decided that a junction is required – but to the west of the operational port estate – unlike the WG Scheme which looks to the construction of a junction within the port estate – an option which is unacceptable.

### **5. ABP and the Port of Newport**

- 5.1 The Newport Dock Company opened the Town Dock in 1842. The Alexandra (Newport) Dock Company was formed in 1865 to construct the Alexandra Dock (now known as North Dock) .The North Dock opened in April 1875. The South Dock was opened in July 1914.
- 5.2 In 1948, operation of the docks was transferred to the British Transport Commission following post-war nationalisation. In 1982, the British Transport Docks Board was

denationalised and became known as Associated British Ports. ABP is a body corporate constituted under the Transport Act 1981.

- 5.3 The Port of Newport has a long and distinguished history. It benefits from a myriad of statutory powers granted to it by local Acts over the years.
- 5.4 In addition, there are a number of general Acts which are also relevant to all statutory port undertakers, thus for example, section 33 of the Harbours Docks and Piers Clauses Act 1847 provides that ABP is required to maintain and operate a port which will be open for all persons for the purposes of shipping and unshipping etc.

## **6. The Port of Newport**

- 6.1 My colleagues Chris Green, who is the Port Manager for the Port of Newport and Rod Lewis, ABP's Marine Operations Manager for South Wales, address in detail the port, its business and its operations – explaining why and how the proposed WG Scheme will have such a serious effect on the Port's commercial livelihood and its future viability. The purpose of my proof is, therefore, effectively to set the scene.
- 6.2 The Port of Newport lies immediately to the South of the City of Newport. The port estate extends to some 620 acres (251 hectares) – all of which is port operational land, with the single exception of some 3.8 acres of land which is owned by Island Steel (UK) Limited. As can be seen from Plan of the Port at Appendix 5, the port is bounded to the east by the River Usk, to the north by the Southern Distributor Road and residential and commercial development of Newport, to the west by the Newport landfill and the River Ebbw and to the south by the Severn Estuary.
- 6.3 The Port of Newport is classified as a 'major sea port' by the Department for Transport, in that it handles in excess of one million tonnes of freight a year.
- 6.4 The Port enjoys a number of advantages over and above our other Welsh ports which makes it particularly attractive to customers. Chief amongst these are its transportation links - by sea, rail and road. Dealing with these in turn –
  - a) **Sea** - The port is capable of accommodating fully laden vessels of approximately 40,000 tonnes deadweight, 30.1m beam, 10.4m draft and 244m in length. When required the port has handled part-laden vessels of up to 47,500 tonnes deadweight.
  - b) **Rail** – Rail access is provided to both the north and south sides of Newport Dock, connecting to the UK's mainline network just outside Newport.

- c) **Road** – The port is connected to the existing A48 Southern Distributor Road, which links east and west to the M4, as well as to the A449 dual carriageway which serves the all-important Midlands traffic that uses the port.
- 6.5 The Port operates with two interconnected Docks – the North Dock and the South Dock - which together operate as an integral whole, as explained by Rod Lewis. . The Dock is accessed by a lock, which is the largest commercial lock access in all of the South Wales ports and the 4th largest in the whole of the United Kingdom. We maintain a maximum water depth of 13.55m Above Chart Datum, which enables us to access vessels up to 10.4m draught.
- 6.6 One significant feature of the port is the availability of highly flexible operational land and facilities within the port estate, adjacent to quays for the loading, unloading and storage of various cargoes, together with the flexibility afforded by the availability of high quality quayside in both North Dock and South Dock enabling the port to accommodate rapidly changing shipping needs. This critical operational flexibility places the port in the enviable position of being able to react, at short notice, to customer demands in a dynamic market.
- 6.7 A serious constraint on operational flexibility at present is the fact that for a vessel to access North Dock from South Dock, it has to pass through what is known as “Junction Cut” – which can be seen clearly on the Plan at **Appendix 5 in ABP/1B**. As currently configured, Junction Cut restricts access to North Dock to vessels with a beam of around 17 metres, although we have plans to widen it to around 35 metres, at a cost of around £5m.
- 6.8 Those plans have been blighted not only by a Highways TR111 Direction (**CD 4.2.4**), reserving a 134m wide corridor running through the middle of the Port protecting the route of the motorway, but also by an Article 4 Direction (**Appendix 3 in ABP/1B**) issued by the predecessor to Welsh Government, albeit eventually lifted in November 2010. The project – in spite of its relative simplicity and cost-effectiveness – has not been put to the ABP Board due to the ‘Damocles sword’ hanging over it from its inception.
- 6.9 That said, the cost of widening Junction Cut has been included in our Welsh Ports' five year capital expenditure programme so that we are in a position to commence the process of obtaining the necessary internal approvals should the scheme currently being promoted by WG not be taken forward.

- 6.10 The port comprises three operational areas each served by South Dock and/or North Dock –
- a) **South side** - the south side of the port essentially comprises the operational area to the south of South Dock and served by South Quay, which is 1031m long, with 6 sections.
  - b) **East side** – this part of the port extends from the Cement Terminal in South Dock along the eastern side of North Dock. It includes the eastern sides of Middle Quay, which comprises 253m of quay length and North Quay, which comprises 545m of usable quay.
  - c) **West side** - this part of the port is served by the north side of South Dock as well as the west side of North Dock. The north side of South Dock comprises 510m of berthing, although 220m is used exclusively by Sims Metals under their agreement with ABP. The west side of North Dock has a further 462m of usable quay space.
- 6.11 It would be an error to view the South Dock and the North Dock as two separate operating entities in that the two docks operate as an integrated whole, each serving the adjacent operational areas.

## **7. THE PORT OF NEWPORT MASTER PLAN 2015**

- 7.1 Given the significance of the Port of Newport to the Welsh and English economies, and in line with Government policy for major sea ports, we have produced the Port of Newport Master Plan, the adopted version of which is provided as **ABP12/H**. The Master Plan considers trade demand forecasts, growth strategies and associated development opportunities for the period to 2035.
- 7.2 It considers the physical development of the port required to accommodate that growth, over three phases –
- a) **Short Term Developments** – expected in the period up to 2020, they include commercial development within the power generation sector, additional provision for dry bulk cargoes and forestry products and the widening of Junction Cut.
  - b) **Medium Term Developments** – expected in the period up to 2025, they include construction of a biomass power station, redevelopment of the steel terminal at North Dock and upgrading of steel shed facilities.

- c) **Long Term Developments** – expected up to 2035, these include filling the northern section of North Dock and development of a 60 acre development plot.

- 7.3 The 2015 Master Plan sets our development aspirations for the port over the next twenty years, absent the WG Scheme. If, on the other hand, the WG Scheme is approved in its current form, I can say with confidence that the port will not be able to develop in this way proposed and will be severely constrained in the future.
- 7.4 The WG Scheme, if built, will cut two swathes through the Port – one from east to west, and one from north to south. In total, the Port will lose around 20% of its operational port land through compulsory purchase by WG and North Dock will no longer be able to function properly in perpetuity. In my opinion, the damage to the long term prospects for the Port will be far-reaching and permanent, and will far outweigh any potential modest benefit derived from the east – west connections that the M4 may bring during peak hours.
- 7.5 I note that at various times WG and its advisers have argued in support of their current crossing proposal that additional capacity can be created in South Dock to offset the impacts of the 25m bridge restriction on North Dock. WG's marine adviser, Global Maritime, state in their shipping analysis report dated 16 July 2015 **ABP12/G** that - *'there are four areas within South Dock that could be developed and provide an additional 1,115m of serviceable quay frontage'*. In suggesting this, however, WG and their advisors have ignored the inconvenient reality that it would cost over £135m to achieve. In any event, such an exercise would merely replace in South Dock berthing effectively lost in North Dock as a result of the WG Scheme, thereby permanently depriving the Port of areas to construct additional berths in response to new commercial opportunities.

## **8. HISTORY OF THE WG SCHEME**

- 8.1 ABP first received notice of a proposal to consider the need for a relief road to serve the southern stretch of the M4 in April 1992. Since this time, there have been numerous consultations with ABP since 1992, reflecting the 'stop-go' nature of the WG scheme.
- 8.2 Over the intervening 24 years, ABP has consistently voiced its opposition to any scheme that impacts on the ability of the port to handle shipping in North Dock. ABP has been consistent in indicating that any crossing of the Port at Junction Cut needs to be significantly higher than the 25m crossing that has been promoted by Welsh



Government to be high enough to allow for the free passage of vessels that use North Dock. For example, a file note of a meeting held between ABP and the Welsh Office in 1993 records that -

*“The largest air draft of these vessels in ballast entering the South Dock was some 46 metres. The equivalent figure for vessels entering the North Dock was 40 metres. ABP considered it appropriate to provide navigation clearance of these figures plus 10% viz... 44 metres above maximum impounded dock water level [for North Dock].” (Appendix 16 in ABP/1B)*

- 8.3 Despite our continued opposition to any scheme that impacts on the ability of the port to handle shipping in North Dock, that will have a seriously detrimental impact on the Port, will interfere with the reasonable requirements of shipping and impede our statutory harbour authority functions, the WG nonetheless continues to promote a scheme with these effects.

## **9. THE WG SCHEME – OPERATIONAL IMPACT ON THE PORT**

- 9.1 If the WG scheme proceeds, ABP is concerned that its statutory duties and obligations as harbour authority in terms of its ability to provide a port function will be impeded. This is the case in terms of day-to-day port operations, the need to operate the port efficiently and the need to operate the port safely.
- 9.2 The WG's proposal in its current form will have a number of very broad-reaching impacts that both together and separately would be seriously detrimental to the Port, including:
- a) WG's intention to take around 20% of the port's land area by compulsion.
  - b) WG's intention to split the port into three distinct operational areas;
  - c) The very significant commercial impacts – both present and future – on ABP and its customers and tenants resulting from the proposed bridge;
  - d) The imposition of a height restriction to shipping using the docks, imposing an absolute height restriction on vessels wishing to access North Dock; and
  - e) The consequent loss of utility of North Dock and the inevitable consequential impact of this on the port's entire shipping programme.

**10. THE WG SCHEME – COMMERCIAL IMPACT UPON THE PORT**

- 10.1 ABP is a commercial company that operates in a very competitive market where the difference between winning and not winning business can depend on very small marginal differences on the per tonne cargo rate.
- 10.2 The Port's revenue is derived from a combination of tariff charges and other contractual charging arrangements that together cover ships dues, wharfage, cramage, cargo handling, storage and value-added services. These arrangements are, in my experience, common within the Ports industry. Many of the commercial arrangements are subject to confidentiality clauses within individual customer agreements. For these reasons, I am necessarily limited on what I can say publicly with regard to the financial consequences for ABP if the M4 proposals are allowed to proceed in this form.
- 10.3 The Port is also faced with very substantial operating costs which include the provision of labour, security, utilities and services, the provision and maintenance of a wide variety of specialist equipment such as Mobile Harbour Cranes, and the upkeep of the Dock and the roads and other infrastructure therein.
- 10.4 The WG Scheme will inevitably have serious financial consequences for the port both in terms of practical operations and future business.
- 10.5 Any loss of trade from Newport is unlikely to be to another South Wales port, given the relative commercial, operational and locational advantages of Newport compared to our other ports for the trades in question.
- 10.6 My assessment of the threat to the port of Newport, as a result of the WG Scheme is that it is almost certain that the port will lose customers and, by association, jobs. In this context it should be noted that ABP cannot force trade to move between its South Wales ports and it would be commercially naïve to suggest otherwise.

**11. ALTERNATIVES**

- 11.1 Such is the seriousness of the impact of the WG scheme on the port, ABP has sought to identify alternative routes that either would have no impact on the port at all or would have a reduced impact that could be mitigated to an acceptable degree so as to avoid serious detriment.

***The ABP Alternative Northern Routes***

- 11.2 ABP has identified and proposed to WG two Alternative Northern Routes, namely ANR1 and ANR2. There is also an option that could be applied to both ANR1 and ANR2, which looks to materially lower the height, and hence cost, of the River Usk crossing. I refer to this variant as the 'Low level Usk crossing' (LLUC).
- 11.3 The ANRs do have an impact on the port, albeit less than that of the WG scheme. They have been designed to full motorway standards and would cross the port further north than the WG scheme, thereby reducing the impact on the port to more acceptable levels. The ANRs also have the added benefit of skirting the Gwent Levels SSSI, rather than crossing it as does the WG scheme.
- 11.4 Both ANR1 and ANR2 diverge from the WG scheme to the east of the River Usk and follow an alignment that crosses the river closer to the Newport Transporter Bridge, before crossing the northern end of North Dock and running parallel to the existing A48 Southern Distributor Road. The route then crosses the northern perimeter of Newport Landfill facility before curving southwards to run alongside, but east of, the London to Cardiff railway line, before re-joining the WG scheme to the west of Lighthouse Road overbridge.
- 11.5 ANR2 has been designed to accommodate a junction to serve Newport Docks, in a similar way to the proposed Docks Way Junction on the WG scheme.
- 11.6 The 'Low level Usk crossing' (LLUC) can be applied to either ANR1 or ANR2, as these are identical to the east of Newport landfill facility. It envisages crossing the Usk at a materially lower height – the M4 road deck being around 10-15m lower than the WG Scheme – with a consequential saving in scheme cost. The exact height of the LLUC would need to be determined in consultation with Newport Harbour Commissioners, having regard to the reasonable requirements of navigation on the River Usk.

***WG Scheme proposal without Docks Way Junction and Link Road***

- 11.7 We do not consider that a compelling case for the inclusion of the Docks Way Link Road and associated junctions has been demonstrated, at least on the evidence presently available. The WG Scheme with the Docks Way Link Road and associated junctions removed represents an alternative solution for consideration, although one that still causes serious detriment to the Port. Whilst we do not wish to see this alternative promoted, we do wish it to be considered in the absence of a justification

for the Docks Way Junction and Link Road. An indicative illustration of this appears as **Appendix 2 in ABP/1B**.

## **12. SECTION 16 ACQUISITION OF LAND ACT 1981**

- 12.1 Section 16 of the Acquisition of Land Act 1981 sets out the criteria to be met before the Secretary of State can certify that the compulsory acquisition of a statutory undertaker's land, such as ABP's Newport Dock, can proceed.
- 12.2 The tests give rise to a number of questions. First, can the land at Newport Dock be compulsorily acquired without serious detriment to the port? The answer to this question is 'no'. The Port will suffer serious detriment if it loses the land that WG are seeking to acquire, as is explained in our evidence to this inquiry.
- 12.3 Second, can the land to be compulsorily acquired be replaced by other land belonging to the Port of Newport? Again the answer to this question is 'no'. The only land that ABP as the owner and operator of the port owns in the vicinity of Newport Dock already falls within the statutory port estate. The replacement of land to be compulsorily acquired by land that already falls within the statutory port estate would merely exacerbate the serious detriment caused by the scheme.
- 12.4 Third, can the land to be compulsorily acquired be replaced by other land that could be acquired by the Port of Newport? Once again the answer to this question is 'no'. The Port is surrounded by the River Usk to the south and east, all forming part of a Special Protection Area. It would not be possible to acquire additional port land along this boundary. To the south-west, the Port is bounded by the River Ebbw and any expansion of the port in this direction is, again, not feasible. To the west and north-west of the port is located Newport Land Fill facility. Finally, to the north, the port is bounded by the A48 Southern Distributor Road.
- 12.5 On this basis I am advised that the Secretary of State cannot lawfully certify that the section 16(2) test is capable of being met, bearing in mind the impact that the WG Scheme will have on the port.

## **13. CONCLUSIONS**

- 13.1 ABP's position is that the WG Scheme as proposed should not proceed.
- 13.2 The Port of Newport is of critical importance to the South Wales economy. In addition, given its location and size, it competes also at a national level in servicing

the UK Midlands market, which makes Newport unique amongst the South Wales ports.

- 13.3 The port depends upon having sufficient berths available in order to service our customers' requirements. North Dock is a critical part of that overall commercial offering today and, when Junction Cut has been widened, its function will be even more critical, as it will effectively operate as a continuation of South Dock in terms of vessel acceptance. This is consistent with the trend of larger vessels being introduced into shipping fleets.
- 13.4 The WG Scheme, if approved, will prevent the port from servicing current, let-alone future, customer requirements by imposing an artificially low height restriction across the port and excising around 20% of the port's land area. The impact of this will be bad for the Port, the Newport economy, the South Wales economy and parts of the UK economy.
- 13.5 The WG Scheme as proposed should not proceed because:
- a) The compulsory purchase, without replacement by the WG, of land which is used for the purposes of carrying on the undertaking of the Port of Newport would result in serious detriment to the undertaking and cannot be replaced by other land belonging to or available for acquisition by the Port without serious detriment - section 16 of the Acquisition of Land Act 1981.
  - b) The WG Scheme would interfere with the reasonable requirements of navigation over the waters within the Port. This is a consideration which is specifically required to be taken into account by the decision-maker under section 107(1) of the Highways Act 1980.
  - c) The WG scheme would interfere with our ability to carry out our statutory functions as Statutory Harbour Authority and insufficient consideration appears to have been given to the practical implications of the motorway across the port.
  - d) Assuming the underlying need for the WG Scheme is demonstrated, alternatives have been identified which would better meet the objectives of the WG Scheme.
  - e) In any event, ABP does not consider that a compelling case for the inclusion within the WG Scheme of the Docks Way Link Road and associated junctions has been demonstrated, at least on the evidence presently available.