

APPENDIX 7

Valley Lines Electrification

Planning Risk Review

December 2011

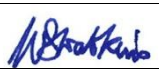
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Valley Lines Electrification
Planning Risk Review Paper

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1 Introduction

This paper has been prepared to inform a business case for the potential electrification of the Valley Lines in South Wales of planning process and associated risk. This paper addresses the following factors that could contribute to planning risk involved in rail infrastructure delivery, likely to be required by the electrification of the Valley Lines:

- The planning process, including -
 - Permitted Development rights;
 - Planning application requirements;
 - Orders under the Transport and Works Act 1992.
- Material considerations to planning permission, including -
 - environmental issues;
 - economic issues;
 - social issues.

Understanding the nature of development associated with electrification is important to setting the context relevant to the planning process for delivering rail infrastructure works. The following works would be expected as part of electrification:

- installation of overhead line equipment;
- alternations or replacement of bridges and other structures to give gauge clearance;
- supporting equipment for operations and maintenance purposes;
- renewing of signalling and alterations to signal gantries to accommodate electrification;
- potential upgrading of accesses onto the railway;
- construction compounds.

2 The planning process

2.1 The planning permission process

It is important to acknowledge that Network Rail projects are largely afforded permitted development rights, meaning that planning permission is often not required. The General Permitted Development Order 1995 (GPDO) sets out permitted development rights for certain types of development and Part 11 of Schedule 2 is commonly used to deliver Network Rail projects under local or private acts or orders. Rail infrastructure projects are delivered by Network Rail who as a rail infrastructure organisation, are able to utilise permitted development rights under Part 11. Such powers cannot be exercised by Welsh Government, Local Authorities or rail operators. Under Part 11, permitted development rights are afforded to development authorised by:

- a) a local or private Act of Parliament,.
- b) an order approved by both Houses of Parliament, or.
- c) an order under section 14 or 16 of the Harbours Act 1964(2)(orders for securing harbour efficiency etc., and orders conferring powers for improvement, construction etc. of harbours),

which designates specifically the nature of the development authorised and the land upon which it may be carried out. Network Rail generally benefits from the above permitted development rights under the original Acts of Parliament authorising the railways (e.g. Great Western Railway Act 1835).

Development is not permitted by under Part 11 if it consists of or includes:

- a) the erection, construction, alteration or extension of any building, bridge, aqueduct, pier or dam, or.
- b) the formation, laying out or alteration of a means of access to any highway used by vehicular traffic,

unless the prior approval of the appropriate authority to the detailed plans and specifications is first obtained.

Should a development fall outside of Part 11 permitted development rights, Part 17 of Schedule 2 identifies permitted development by statutory undertakers for railway or light railway undertakings. However, it is most common for works to be undertaken using Part 11. Under Part 17 development is permitted by railway undertakers on their operational land, required in connection with the movement of traffic by rail. Development is not permitted by if it consists of or includes:

- a) the construction of a railway;
- b) the construction or erection of a hotel, railway station or bridge; or
- c) the construction or erection otherwise than wholly within a railway station of -
 - i. an office, residential or educational building, or a building used for an industrial process; or

- ii. a car park, shop, restaurant, garage, petrol filling station or other building or structure provided under transport legislation.

References to the construction or erection of any building or structure include references to the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected.

Whilst generally, it should be acknowledged that the nature of development for electrification of operational railway is unlikely to give rise to significant environmental effects, it should be noted that a development proposal may be considered as requiring Environmental Impact Assessment and would therefore need to satisfy the screening process associated with the Environmental Impact Assessment Regulations 1999. The Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2008 requires subsequent applications to satisfy EIA screening. Therefore all prior approvals under Part 11 of the GDPO would require EIA screening¹. In order to satisfy an EIA, the preparation of an Environmental Statement may be undertaken. Should a screening opinion response from the Local Planning Authority conclude the need for Environmental Impact Assessment, permitted development rights would be revoked, unless pursued under Part 11. The requirement for a planning application would demand associated financial and time costs to the development process.

Where a proposed development falls outside of permitted development rights afforded by the GDPO, a planning application is required. Although this is unlikely for Network Rail projects, where a planning application be required the planning application process will necessitate the preparation and submission of a number of documents and plans, as requested by the relevant Local Planning Authority. The content of a planning application will be determined by the relevant Local Planning Authority, depending on the size, nature and location of a proposed development. It should be noted that a development proposal may need to satisfy the screening process associated with both the Environmental Impact Assessment Regulations 1999 and Habitats Regulations 2010, depending on the likely environmental and ecological impact of the proposed development. Again, the requirement for a planning application would demand additional financial and time costs to the project implementation process.

Should a development impact on a listed building² or conservation area, there may also be a necessity to apply for Listed Building Consent or Conservation Area Consent respectively to the relevant Local Planning Authority. Should works require vegetation clearance, there could be a requirement to obtain consent should a tree be protected by a Tree Preservation Order (TPO). This would necessitate an application for tree works and/or notification of proposed works to trees in a conservation area.

¹ Prior approvals should be submitted to the appropriate authority under Part 11 of the GDPO (e.g. for projects including the erection, construction, alteration or extension of any bridge).

² Listed Building Consent would only be required should works materially affect a listed building, e.g. physically attach stanchions to a listed building structure.

2.2 Applying for a Transport and Works Order

One route of delivery, particularly for major infrastructure schemes, is to apply for an Order under the Transport and Works Act 1992 (TWA). Network Rail would usually only take this route should a proposed development involve the need to acquire land by compulsory purchase in order to facilitate potential infrastructure works. It should be noted that it is unlikely that Network Rail would submit a Transport and Works Orders (TWO) unless there were problems with land acquisition or construction access. This process is specific to Wales. In England, electrification projects would be considered by the Infrastructure Planning Commission (unless the works proposed are permitted development), which is the independent body that examines applications for nationally significant infrastructure projects. Cross border projects such as Great Western Main Line electrification would need to consider both approaches although Network Rail are pursuing the implementation of that project under their permitted development under Part 11 of the GPDO with an accompanying Environmental Statement under the EIA Regulations.

Applications for TWOs are made to the Welsh Government by (or on behalf of) the promoters of a scheme. The Welsh Government consider each application on its individual merits and make decisions only after considering all the comments made. This may be via a public inquiry, depending on whether a scheme is regarded as being of national significance. The kinds of matters that can be authorised by a TWO order include:

- compulsory powers to buy land;
- powers to construct, alter, maintain and operate a transport system;
- powers to carry out and use works that interfere with navigation rights;
- the right to use land (e.g. for access or for a work site);
- amendments to, or exclusion of other legislation plus powers for making bylaws;
- the closure or alteration of roads and footpaths;
- provision of temporary alternative routes; and
- safeguards for public service providers and others.

A TWO does not in itself grant planning permission. But the organisation applying for the order (in this case, Network Rail) can ask the Welsh Government to grant planning permission for any development described in the order. The Welsh Government would only grant planning permission if it decided to make the TWO. It would do so at the same time as the order was made, and may attach conditions to it. On the other hand, the organisation applying for a TWO may apply for planning permission, separately, to the relevant Local Planning Authority.

In some cases, a scheme may also require a Listed Building Consent, Conservation Area Consent or an application for tree works protected by a TPO in addition to a TWO. In that case, the organisation applying for the TWO usually applies for these consents at the same time as they apply for the order.

Applications for TWOs, and objections to them, must follow the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules. The typical documents needed for a proposal involving works are:

- a draft order and an explanatory memorandum;
- a concise statement of the aims of the proposals;
- a report summarising the consultations carried out by the applicant;
- plans and cross sections;
- an environmental statement;
- a book of reference, including names of owners and occupiers of land to be bought compulsorily;
- the estimated costs of the proposed works; and
- the funding arrangements.

2.3 Summary

It is important to note that Network Rail has the benefit to fall back on the Parliamentary Powers afforded to it when sections of the railway were originally constructed and therefore it is common practice for Network Rail to primarily rely on permitted development rights afforded through Part 11, Schedule 2 of the GDPO to deliver rail infrastructure projects. Where necessary, certain works may require prior approval from the appropriate authority for projects delivered through this process³ and this may require EIA screening to each relevant Local Planning Authority. Although not a legal requirement, it is common for Network Rail to prepare an Environmental Appraisal (not a formal ES) for electrification projects such as the Liverpool to Manchester where EIA screening concluded the project was not EIA development in order to demonstrate that as a responsible land owner and infrastructure provider, the likely environmental effects have been considered in the development of the design.

Prior to project delivery, it is recommended that Network Rail establish all the enabling Acts of Parliament that authorised the railway before it could confirm with absolute certainty that permitted development rights apply.

³ Such works would commonly involve alterations or replacement of bridges or other structures to accommodate gauged clearance.

3 Planning risk

Where permitted development rights do not apply, an application for planning permission is required. When submitted, the relevant decision body will consider a number of material considerations as part of its decision making process. There may be a diversity of risks to the planning process, associated with various environmental, economic and social influences to a particular scheme proposal. A desk study has been undertaken to identify the potential risks to the planning process, with the key issues set out below.

3.1 Environmental issues

The environmental impacts of an electrification scheme would commonly be assessed by the relevant Local Planning Authority through the EIA screening process. A Local Planning Authority would only deem there to be a requirement for EIA should it be considered that a scheme would give rise to significant environmental effects. However, due to the nature of proposed works on the operational railway, it would be unlikely for an electrification scheme to be judged as likely to give rise to significant environmental effects. As aforementioned, it is common for Network Rail to prepare an Environmental Appraisal for electrification projects to demonstrate that environmental issues have been considered. Such an approach, although not a legal requirement, could strengthen the delivery process particularly in the case of a potential judicial review.

In light of the above, an assessment of environmental effects would predominantly consider any impact on environmentally sensitive land designations, flood risk areas and heritage sites. Such sites can be identified along the Valley Lines corridor, using up to date Countryside Council for Wales, Environment Agency and Cadw data sets respectively. Each relevant mapping is presented in Appendix A of this paper and the risks to be considered are:

- **Environmental designations**

Sections of the Valley Lines either pass directly through, or lie adjacent to, land designated as a Special Area of Conservation (SAC); Site of Special Scientific Interest (SSSI); Special Protection Area (SPA); Area of Outstanding Natural Beauty (AONB); National Park; or Country Park. Should works be deemed to significantly affect the setting of an environmentally sensitive site, there will be a greater risk to securing planning permission and a planning application would need to satisfy a screening process undertaken through the Environmental Impact Assessment Regulations 1999. There may also be a need to undertake an assessment of likely significant effects through the Habitats Regulations 2010.

- **Flood risk**

Large sections of the Valley Lines are either considered to be at little or no risk of fluvial or tidal/coastal flooding, or served by significant flood defence infrastructure. However, there are also sections of the Valley Lines located either within or adjacent to land known to have flooded in the past and without significant flood defence infrastructure. Development within these “at risk” areas is likely to require a Flood Risk Assessment / Flood Consequences Assessment to identify flood risk, or support a planning application if one is required.

- **Heritage designations**

The Valley Lines corridors contain a significant number of Listed Buildings⁴, in addition to a smaller number of Scheduled Ancient Monuments and Registered Parks and Gardens – often set within land allocated as Historic Landscapes. A development proposal that could affect the setting of a heritage site will need to set out how it will protect or enhance local character, whilst Listed Building Consent may be required through the planning permission process, should a proposal materially affect a designated Listed Building.

3.2 Economic issues

Identifying the economic benefits of Valley Lines electrification through the planning process would support the case for delivery. Whilst an economic appraisal would not be required legally should permitted development rights be utilised, communicating the benefits within a chapter of an Environmental Statement could strengthen the delivery process, particularly in the case of a potential judicial review. Alternatively, should planning permission or Listed Building Consent be required for a project, identifying the economic benefits of a scheme could enhance any application.

Valley Lines electrification will bring benefits in terms of improved accessibility, journey times and effective movement of freight along the Valley Lines and GWML corridor. In addition, it is acknowledged that electrification has the potential to enhance accessibility to employment areas, particularly for communities located in the South Wales Valleys.

For the purposes of informing the business case supporting Valley Lines electrification, **the primary planning risk in terms of economic deliverability of a major infrastructure scheme is the potential need for land acquisition or to gain the required access for construction.**

As aforementioned in this paper, a TWO will generally include powers to acquire all property in the limits of land to be acquired or used. The powers should be exercised on the basis that Network Rail will acquire no greater amount of land than appears to be reasonably required following detailed design. Payment of compensation for land compulsorily acquired should be in accordance with the general statutory framework incorporated within the TWO (and as interpreted by the Courts and the Lands Tribunal). The general purpose of the statutory framework is to provide fair compensation for a person whose land has been compulsorily acquired and where applicable, compensation payable will be the open market value of the land acquired (assuming it is sold by a willing seller) considering issues of disturbance, diminution in value of retained land and other losses arising as a direct and reasonable consequence of the acquisition and any statutory loss payment. Where rights are required for utilities diversions, there may be greater risk in terms of works and costs involved in delivery.

⁴ Of note, both Cardiff Central and Pontypridd train stations are registered as listed buildings.

3.3 Social issues

Should a planning application be required, the impact of a scheme on communities would be considered as part of the planning process by the relevant Local Planning Authority. Valley Lines electrification will ultimately have a positive impact on communities in South Wales by improving accessibility and journey times to and from local and regional facilities, services and employment centres. However, the dominant social issues are likely to be:

- **Community impact**

The delivery of necessary infrastructure works to electrify the rail network has the potential to impact on local communities, primarily through affecting visual amenity. A number of residential properties are located adjacent to sections of the rail network and there is a risk that their visual amenity could be adversely affected by the installation of overhead line equipment in particular. Whilst the impact of rail operations on local communities would be reduced following electrification due to anticipated reduced noise and air pollution levels; there may be some public opposition to proposed construction works by affected properties within the network corridor. Mitigation measures should be proposed within a planning application to address any potential concerns on community impact. Should works also require land acquisition or demolition of existing properties, the land acquisition policy and powers sought for Network Rail should be proportionate and in the public interest. This process has the potential to raise public opposition to any scheme.

- **Community safety**

Any development proposal is required to set out how it will impact on/address community safety as part of the planning application process, through a mandatory Design and Access Statement. A proposed scheme should not threaten community safety both during and post construction works.

4 Conclusion

Depending on the approach to be taken to the delivery of rail infrastructure and necessary station/facility enhancements; there are a number of planning process that could be followed. It is most common for Network Rail to utilise the Parliamentary Powers afforded to it when sections of the railway were constructed and exercise permitted development rights afforded through Part 11, Schedule 2 of the GDPO to deliver rail projects. With certain works potentially requiring prior approval (such as bridge alterations for gauge clearance) from the appropriate authority for projects delivered through this process, **it is recommended that all the enabling Acts of Parliament that authorised the railway are established prior to any approach to planning being followed.**

The application for a Transport and Works Order (under the Transport and Works Act 1992) has the potential to facilitate significant rail infrastructure delivery and could be important to any land acquisition by compulsory purchase, should there be any barriers to acquisition or access to the railway for construction. In the unlikely event that electrification could not be delivered by Part 11 of the GDPO by Network Rail, planning permission may be sought either as part of a Transport and Works Order, or separately via a planning application to the relevant Local Planning Authority.

In terms of planning risk; there are a number of environmental, economic and social issues that could influence the planning process should a scheme require planning permission. Whilst the Valley Lines corridor is subject to environmental land designations, flood risk issues and heritage designations; mitigation measures associated with both environmental and community impact should be considered for specific schemes. However, due to the nature of proposed works on the operational railway, it would be unlikely to be judged to give rise to significant environmental effects. At a higher level, it is largely acknowledged that electrification will deliver a number of environmental, economic and social benefits in terms of improved pollution outputs and enhanced accessibility along the network.

Whilst a range of planning issues are raised and discussed within this paper; it is considered that there are no significant planning risks that could jeopardise the delivery of Valley Lines electrification. As per common practice for Network Rail, electrification projects would be largely delivered through permitted development rights afforded by Part 11, Schedule 2 of the GDPO.

Appendix A

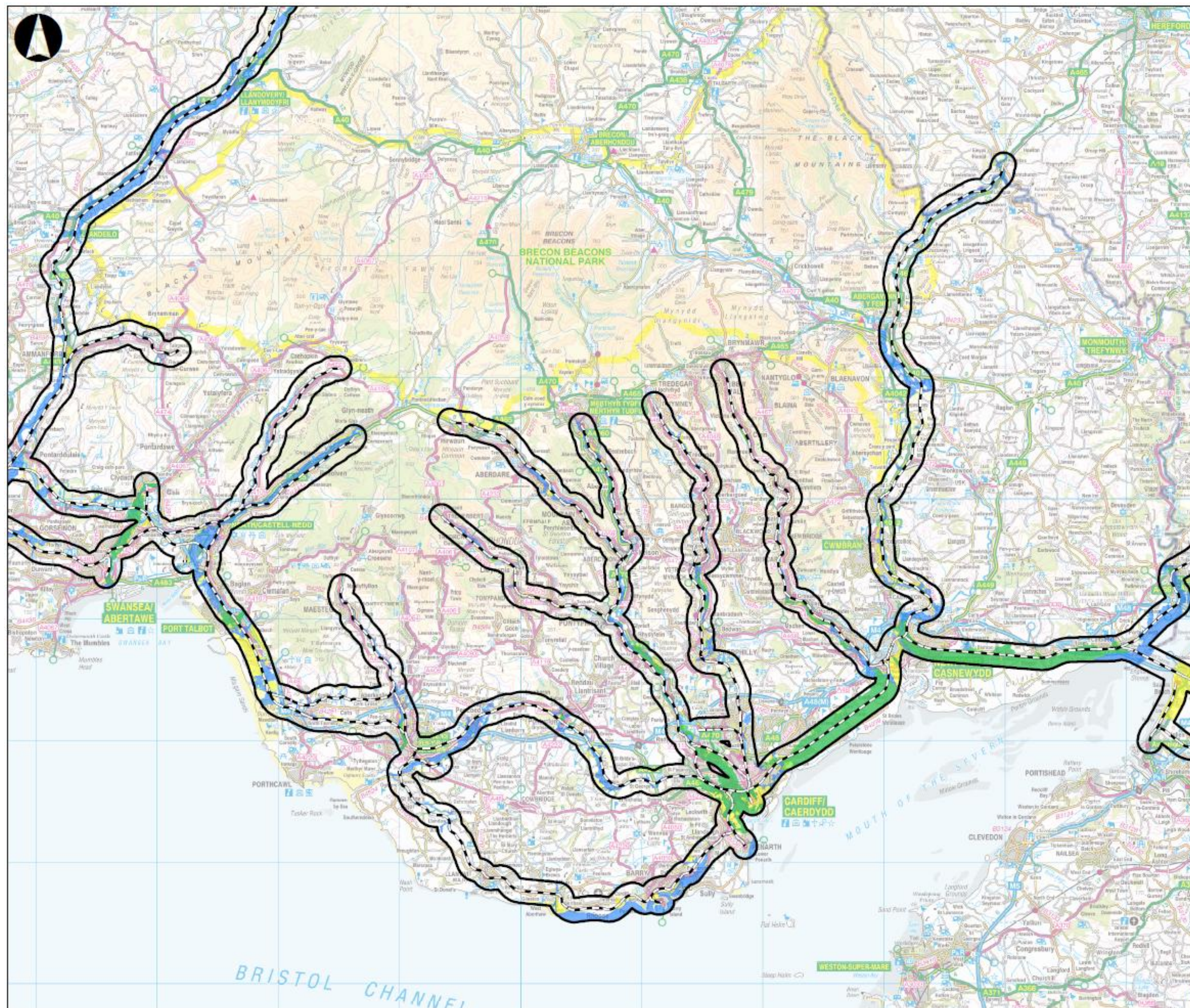
A1 Environmental Designations Map

A2 Flood Risk Map

A3 Heritage Designations Map

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Legend

- South Wales Valleys Line
- Valleys Line 1km Buffer
- Zone C1
- Zone C2
- Zone B
- Zone A

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