



MetroWest+

Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.27 ExA.FI.D4.V1 – Applicant's response to the ExA's Actions from the Issue Specific Hearing 3 (ISH3)

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Application by North Somerset Council for an Order granting Development Consent for the Portishead Branch Line – MetroWest Phase 1

Hearing Action Points arising from the Issue Specific Hearing 3 dealing with Environmental Matters held virtually on Tuesday 12 January 2021

DCO Document Reference: 9.27 ExA.FI.D4.V1

Action	Description	Action by	When	Applicant's Response
1	To provide an updated Habitats Regulation Assessment (HRA) and Environmental Statement (ES) to capture all changes that have been made to the application since it was submitted and update the relevant documents to reflect the current policy position with particular reference to recent changes to policy on climate change and the Paris Agreement	Applicant	Deadline 6	The Applicant will respond at Deadline 6
2	To submit a completed Statement of Common Ground (SoCG) agreed with Natural England	Applicant/ Natural England (NE)	Deadline 4	An updated version of this document, dated 21 December 2020 and agreed by NE on 7 January 2021, has been provided as part of the Applicant's Deadline 4 submissions (Document reference 9.3.6 ExA.SoCG-NE.D4.V3). As explained during ISH3, the SoCG is submitted in draft. In light of anticipated progress in respect of the delivery of compensatory measures on Forestry Commission land the Applicant expects that the completed SoCG will be submitted before the end of the Examination.
3	To provide an updated version of the legal opinion from Stephen Tromans QC regarding the Report to Inform HRA [APP-197] including a written commentary on the implications for the application of the policy paper published by DEfRA on 1 January 2021 relating to changes to the Habitats Regulations 2017 following the departure of the UK from the EU	Applicant	Deadline 4	The government paper, <i>Policy Paper: Changes to the Habitats Regulations 2017</i> , was published on 1 January 2021 [https://www.gov.uk/government/publications/changes-to-the-habitats-regulations-2017]. This paper explains the changes made to the Habitats Regulations 2017 by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 to reflect the UK's withdrawal from the EU.

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				<p>As the paper points out, most of the changes involve transferring functions from the European Commission to the appropriate authorities in England and Wales. All other processes and terms in the Habitats Regulations 2017 for the protection of sites and species do not change and existing guidance remains relevant. The obligations of competent authorities for the protection of sites and species do not change. The Natura 2000 network becomes a national site network, subject to the same levels of protection.</p> <p>The only relevant change for the Application is in relation to the woodland as a qualifying feature of the SAC as a priority habitat. The effect of the change is that the Secretary of State as appropriate authority will provide the opinion as to IROPI, rather than the European Commission, having consulted the devolved administrations, the Joint Nature Conservation Committee and any other person the Secretary of State considers appropriate. The IROPI test itself does not change.</p> <p>The updated version of Mr Troman's legal opinion will follow at Deadline 6.</p>
4	To provide an update on the progress of the SoCG's with the National Trust and the Forestry Commission including an indication of when they would be agreed and submitted into the Examination	Applicant	Deadline 5	This will be provided at Deadline 5. The Applicant will continue to liaise with the relevant party
5	To provide further detail on whether a SoCG with the Woodland Trust is likely to be forthcoming including details of what attempts have been made to engage with the Woodland Trust and the	Applicant	Deadline 5	This will be provided at Deadline 5. The Applicant will continue to try to obtain a response from the relevant party

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	progress made			
6	To submit completed SoCGs agreed with North Somerset District Council (NSDC) and Bristol City Council (BCC)	Applicant/ NSDC / BCC	Deadline 5	This will be provided at Deadline 5. The Applicant will continue to liaise with the relevant parties.
7	Confirmation as to whether Whitebeam planting compensation Package 1 is to fall away; if it is when would Package 2 be agreed and when would reference to package 1 be removed from the application documentation?	Applicant/ NE	Deadline 4	The Applicant is seeking to secure, by Deadline 6, completion of the legal agreement with the Forestry Commission under which the Applicant can commit to the delivery of the Whitebeam planting Package 2. Provided that is achieved the reference to Package 1 will be removed from the application documentation.
8	To set out their position if Package 2 was not agreed and the application was to proceed on the basis of Package 1	NE	Deadline 4	The Applicant identified all four Package 1 sites using the site selection criteria set out in the HRA [ExA reference AS-027, version 02] at paragraph 11.5.4. As explained at paragraph 11.5.5, the Applicant considers that with careful site preparation to facilitate the success of whitebeam establishment, the introduction of whitebeam to the Package 1 sites would ultimately improve the quality of existing <i>Tilio-Acerion</i> woodland. Whilst the Applicant considers that Package 1 would provide suitable compensation in respect of whitebeam planting, its preference is for the delivery of the Package 2 measures. Depending on the progress of negotiations with the Forestry Commission, the Applicant may need to respond further at Deadline 5 but hopes the topic can be dealt with in the relevant SoCG with Natural England.
9	To set out what their concern is regarding the 0.06 hectares of grassland loss and the implications for the HRA	NE	Deadline 4	N/A

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10	To provide a plan (or reference to existing plans) confirming where the 0.06 hectares of grassland that would be lost is located and who owns it, Network Rail or National Trust; to confirm whether this would be lost temporarily or permanently and if it would be lost on a permanent basis clarify how this would be mitigated and confirm if this loss/ mitigation needs to be reflected in the HRA or other application documents.	Applicant	Deadline 4	Further information, including a series of plans, is provided at Appendix 1 to this document.
11	To provide a written summary of Ms Allchin's oral response on the potential loss of grassland	Applicant	Deadline 4	This is provided in the Applicant's summary of its Oral Submissions for ISH3 (Document reference 9.24 ExA.ISH3.D4.V1).
12	To provide a written response to the points raised by Mr Tarr in his written submission [AS-053]	Applicant	Deadline 4	This is provided as part of the Applicant's Deadline 4 submissions (Document reference 9.29.ExA.CAS.D4.V1).
13	To submit a change request in relation to the removal of works 10c, 12b and 16b from the application as they would no longer be required as mitigation in relation to Great Crested Newts	Applicant	Deadline 4	This has been submitted as part of the Applicant's Deadline 4 submissions (Document reference 9.28 ExA.F1.D4.V1)
14	To confirm how the Ham Green newt population would be affected by the change to a District Level Licensing approach for dealing with Great Crested Newts	Applicant	Deadline 4	<p>Great crested newts (GCN) were identified by eDNA at pond No. 37, which is just over 250m from the proposed Ham Green compound on the other side of the operational railway (referred to as the Portbury Freight Line) and approximately 230m from the order limits. There is also a GCN population at St Katherine's School (referenced in the previously submitted GCN survey (AS-038) at paragraph 4.4.10). The pond lies approximately 300m south of the Portbury Freight line and is therefore outside the 250m buffer zone required for consideration of GCN licensing.</p> <p>The construction boundary at Ham Green is within the District</p>

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				<p>Level Licence (DLL) for the scheme agreed with Natural England for GCN. The DLL gives the same level of certainty of GCN population protection as European Protected Species licencing.</p> <p>The Applicant considers it unlikely that GCN will be found on the Ham Green compound owing to the distance from known GCN ponds. However, to reduce the risk of harm should GCNs be present during development, reasonable avoidance measures such as habitat manipulation and destructive searches will be undertaken at Ham Green compound as detailed in the Master CEMP (AS-046; DCO Document Reference 8.14, paragraph 6.2.37). The area proposed for habitat manipulation and destructive searches is the same as that shown for reptile displacement in the Reptile Mitigation Strategy, Appendix 9.13 (AS-040), Figure 1. The Applicant proposes to retitle the Reptile Mitigation Strategy as "Reptile and Amphibian Mitigation Strategy", to include within it the application of appropriate measures for the protection of amphibians including newts and toads, and to submit this at Deadline 6.</p>
15	To confirm when the survey results for the toads at Lodway Farm that is due to occur in late February/early March would be submitted into the Examination	Applicant	Deadline 4	The survey results for the toad survey at Lodway Farm will be submitted at Deadline 7 (12 April 2021). The Applicant does not anticipate that the outcome of this survey will alter the measures discussed with Mr Harvey of the Pill Toad Patrol that were listed at REP2-013 and that will be included in the Reptile and Amphibian Mitigation Strategy referred to in the Response to Action 14 above.
16	To further consider the use of half pipes and other types of mitigation used elsewhere under railway	Applicant	Deadline 5	The Applicant will respond at Deadline 5

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	lines for the movement of toads and whether there are any existing gaps that toads can migrate through and how these would be secured			
17	To provide an update within the SoCG regarding the situation with regards to the contribution to the delivery of trees off-site requested by BCC	BCC/ Applicant	Deadline 4	The Applicant expects to submit a completed SoCG with BCC at Deadline 5. The completed SoCG will include an update on the contribution to the delivery of trees off-site.
18	To submit a marked up plan to confirm that the protected oak tree referred to by Mr Tarr in his written submission [AS-053] would not be affected by the proposal with particular reference to the Root Protection Zone, impacts from construction traffic and the proximity of the proposed compound to the tree and to confirm whether the tree is an actual or potential bat roost	Applicant	Deadline 4	<p>A marked-up plan of the protected oak tree has been provided at Appendix 2 to this document.</p> <p>The boundaries of the MetroWest project do not encroach onto the protected oak tree within the field, including the temporary right of access which goes around the tree during the construction stage. The oak tree in the middle of the field [target note HG12, APP-133] has bat roosting potential and will not be affected by the scheme, including the temporary right of access to the lake.</p>
19	To provide a written response to the comments made by Mr Bonham regarding carbon offsetting with particular reference to tree planting	Applicant	Deadline 4	The Applicant has not undertaken a study to identify carbon offsetting measures, including the proposed tree planting. The tree planting that has been proposed is to mitigate trees lost to the scheme and the proposals have been developed to meet ecological and landscaping objectives.
20	To confirm that bio-diversity net gain would not be required by the National Policy Statement for National Networks and then set out what if any additional enhancement measures are proposed, where and how they would be delivered/ secured	Applicant	Deadline 4	The National Policy Statement for National Networks does not include a requirement that NSIPs should provide bio-diversity net gain. Part 6 and Schedule 14 of the Environment Bill 2019 – 2021 propose that a new Schedule 7A be added to the Town and Country Planning Act 1990 in which planning permissions granted under that Act would be deemed to be granted subject to a pre-commencement condition to secure the provision of biodiversity net gain. However, the Environment Bill does not propose the insertion of an equivalent provision in the

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				<p>Planning Act 2008.</p> <p>Notwithstanding this, the Applicant is actively considering enhancement opportunities and is seeking to provide biodiversity net gain wherever possible. Further information will be provided for Deadline 6.</p>
21	To include the additional air quality table in the HRA and ES	Applicant	Deadline 6	The Applicant will respond at Deadline 6.
22	To signpost where the Network Rail 'Traction decarbonisation network strategy' can be found in submissions (or provide a copy if not done so) and to confirm whether this is policy and if not, what weight can be given to the strategy	Applicant	Deadline 4	The Network Rail document "Traction Decarbonisation Network Strategy" has previously been submitted to the ExA Panel and has examination document reference REP2-019. Please refer to the Applicant's post-hearing written response submitted at Deadline 4 (DCO Document Reference 9.27 ExA.FI.D4.V1) for commentary on the status and weight to be given to this document.
23	To confirm when the North Somerset Nature Emergency was declared and provide a copy of the action plan	NSDC	Deadline 4	<p>The North Somerset Nature Emergency was by NSDC declared on 10 November 2020.</p> <p>The Applicant understands that the action plan will be submitted separately by the Relevant Planning Authority.</p>
24	The Environment Agency and BCC Flood Experts who could not attend the hearing to listen to the digital recording and respond to any points raised in relation to agenda item 5. In particular they should provide a clear statement about the implications of Order land falling within flood zone 3a and 3b and the tests that the Secretary of State would need to apply in the event that this matter is not agreed by the end of the Examination	Environment Agency (EA)/ BCC	Deadline 4	The Applicant may have to respond to the submitted information at Deadline 5.

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25	Applicant to continue discussions with the EA and BCC to resolve this matter and even if matters remain outstanding a completed SoCG to be submitted by Deadline 5	Applicant/ EA/ BCC	On-going	The Applicant will continue discussions with the EA and BCC as requested.
26	To provide comment on the emergency evacuation plan and confirm of BCC function	BCC	Deadline 4	-
27	To provide a plan showing the Clamage Road compound and adjoining track overlaid with the flood zones as advocated by the EA and by the Applicant to aid understanding of where the areas of dispute with regards to the functional floodplain lie. Including if available an indicative layout for the compound	EA/ Applicant	Deadline 4	<p>Four plans have been provided at Appendix 3 to this document.</p> <p>Two FZ plans have been provided for the Bower Aston area, one showing the area it considers to be FZ3a and the other showing FZ3b which just shows the main rivers and culverts running through the area as also show on map 15 of the SFRA.</p> <p>The Applicant has also produced two layout plans for the Clamage Road compound, one showing the possible layout during construction to include the temporary compound and the other showing the layout of the permanent compound. As provided for in APP-189, the welfare facilities will be provided at a level of 8.1 m AOD and if necessary on engineered stilts to avoid any take up of space in the event of flooding.</p>
28	To consider how pre/ post construction topographic studies and any remedial work required at Cattle Creep bridge could be secured in the DCO	Applicant	Deadline 4	The Applicant has prepared additional drafting on this point which it will shortly share with Environment Agency and the relevant planning authority. It is hoped that the parties can then agree to provision being included within Schedule 2 (Requirements) in the dDCO submitted for Deadline 5.
29	To provide comment on whether the culverts around Royal Portbury Dock under the disused	Applicant	Deadline 4	There are a number of culverts below the disused railway which have been assessed at GRIP 3 - APP-186 GRIP 3

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	railway would need to be adapted to accommodate climate change and if they would when and how this detail would be submitted/ secured			<p>Track Drainage Design and Culvert Survey to be repaired and improved. This is not something which will be done in more detail until GRIP5 detailed design.</p> <p>Hydraulic modelling of Drove Rhyne undertaken for the Flood Risk Assessment indicates that flood levels would remain within the channel embankments in the vicinity of Royal Portbury Dock during the 100 year return period flood event with an allowance for climate change (Table 4.6 in ExA Doc Ref. APP-076).</p> <p>The current proposal is to repair the Victorian culverts or replace them, on a like-for-like basis.</p> <p>The Applicant also notes any larger pipes culverts could have unintentional consequences for flood risk downstream and requires a more detailed assessment at the appropriate time.</p>
30	To provide details of how run off from the proposed compound at Ham Green would be dealt with to ensure that it would not contaminate the ponds	Applicant	Deadline 4	Please refer to APP-192 (6.26) Surface Water Drainage Strategy for Portishead and Pill Stations, haul roads and compounds. Drawing 467470.BQ.04.20-DS-C9 – C9 Ham Green Compound Drainage Strategy (page 243 of 356).
31	Provide a location/ layout plan of the proposed affordable housing scheme overlaid with the location of the Ham Green compound	NSDC	Deadline 4	This information will be submitted separately by NSDC as LPA.
32	To submit details of the location of any further sites that parties think that the Examining Authority (ExA) should visit on either an accompanied or an unaccompanied basis including reasons as to why they need to be visited and if they need to be on an accompanied basis how this could be done	All	Deadline 4	The Applicant provided its suggestions for accompanied site visits at Deadline 1. Subject to the comments below, the locations listed are publically accessible and many have been visited by the ExA.

Action	Description	Action by	When	Applicant's Response
	given the current COVID-19 restrictions			<p>At ISH3 the Applicant proposed the ExA may wish to walk on the disused railway in Portishead, and consider the location of Work No 7. The Applicant will shortly provide the ExA and Examination Officers a letter confirming the Panel and Examination Officers may walk on the parts of the disused railway owned by the Applicant.</p> <p>The authority to enter the trackbed will include all of the railway from Portishead to Portbury Old Station, Station Road Portbury. (Access at Sheepway may be restricted by the presence of the contractors on site implementing the National Grid (Hinkley Point C Connection Project) Order 2016.)</p> <p>The authority to be provided by the Applicant will be subject to entry being at the individuals' own risk and the Applicant will expect the Panel to use Personal Protective Equipment, including suitable footwear, and that those attending consider fully the risks presented by walking on a disused railway.</p>
33	To provide written consent for the ExA to access the disused track in order to be able to carry out an Unaccompanied Site Inspection	Applicant/ NSDC	Deadline 5	The Applicant will provide confirmation by Deadline 5.
34	To submit post hearing submissions including written summaries of any oral cases put at any of the hearings	All	Deadline 4	The Applicant has done so (see Document 9.24 ExA.ISH3.D4.V1).