



MetroWest+

Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.40 ExA.ISH4.D6.V1 – Applicant's Oral Case and response to Representations at ISH4

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The proposed Portishead Branch Line (MetroWest Phase 1) Order

Applicant's Oral Case and responses to Representations at the Issue Specific Hearing 4 (ISH4) held on 2 March 2021 at 10am

Document Reference: 9.40 ExA.ISH4.D6.V1

1. Introduction

- 1.1 The fourth Issue Specific Hearing (**ISH4**) for the Portishead Branch Line – MetroWest Phase 1 (**DCO**) application was held virtually on Microsoft Teams on Tuesday 2 March 2021 at 10am.
- 1.2 The Examining Authority (**ExA**) invited the Applicant to respond to matters raised at the Hearing but also in writing following the ISH. This document summarises the responses made at the CAH by the Applicant and also seeks to fully address the representations made by Affected Parties, Interested Parties and other parties attending.
- 1.3 The Applicant has responded to the topics raised by each of the attending parties in the order the ExA invited them to speak provided cross-references to the relevant application or examination documents in the text below. Where it assists the Applicant's responses, the Applicant has appended additional documentation to this response document as follows:

2. Submissions in response to matters raised at ISH4

Ref	Comment/ Representation by:	Questions/Issues Raised at the ISH	Applicant's Response at the ISH	Applicant's Written Response
Agenda Item 2: Articles and Schedules of the draft DCO (excluding Schedules 2, 16 and 17)				
1.	ExA BCC	Article 2 Following deadline 5, the definition in Article 2 of 'commence' had been amended to include the laying out of compounds and the erection of	There were no comments from the Applicant.	The Applicant has no further comments.

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	NSC	<p>protective fencing. The ExA queried whether the local planning authorities (LPA) were content with the amendment?</p> <p>Both LPAs confirmed they were content with the changes.</p>		
2.	ExA BCC NSC	<p>Article 13</p> <p>The article relates to the street works and the plans which alter the layout of streets within the order. The ExA confirmed the list of works and plans had been amended to include:</p> <p>(k) 'make and maintain crossovers and passing places', and</p> <p>(l) 'to execute any works of resurfacing or of resurfacing of the highway'.</p> <p>Are the relevant highway authorities content with the amendment?</p> <p>Both LPAs confirmed they were content with the change.</p>	There were no comments from the Applicant.	The Applicant has no further comments.
3.	ExA	Article 22	There were no comments from the Applicant.	The Applicant has no further comments.

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	BCC NSC	<p>The article relates to the discharge of water. The ExA commented that the previous outstanding issues appeared to have been dealt with and asked the parties to confirm they were content with the draft wording?</p> <p>Both LPAs confirmed they were content with Article 22.</p>		
4.	ExA BCC NSC	<p>Article 44</p> <p>At ISH1 on the dDCO, North Somerset Council (NSC) asked the applicant to revise Article 44 in the order to provide greater control over the removal of hedgerows, how they would be placed and how they would be protected.</p> <p>The ExA queried whether the provision had now been updated to the satisfaction of the local authorities?</p> <p>Both local authorities, Bristol City Council (BCC) and NSC, confirmed they were content with the draft of Article 44.</p>	<p>The Applicant advised that it understands NSC is now content with the draft of Article 44 regarding hedgerows as provided within the dDCO.</p>	<p>The Applicant has no further comments.</p>
5.	ExA NSC	<p>Article 46</p> <p>The ExA referenced that the time period within the provision had been extended</p>	<p>The Applicant confirmed that the discussion related to Article 46 for traffic regulation in the hearing.</p>	<p>The Applicant has no further comments.</p>

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		<p>to 12 weeks as requested by NSC under Article 46(3)(a) and asked whether the LPAs were content with the draft?</p> <p>NSC confirmed they were content with the redrafted article.</p>		
Agenda Item 3: Schedule 2 of the DCO – Requirements				
6.	ExA	<p>Requirement 3</p> <p>Following the Applicant's change request, work 27 was removed from the order that previously appeared at Requirement 3(2)(b). In the place of requirement 27 the applicant had amended the provision to state 'stage 8 not used' to reflect the works removal.</p> <p>The ExA queried why stages 9 and 10 had not been put in place of stage 8 with amended numbering (i.e. to bump up the numbering)?</p>	<p>The Applicant stated that they were willing to amend the numbering, but it had not been changed to avoid confusion with the references in other application documents.</p>	<p>The Applicant proposes to retain the number and "not used" as previously drafted for simplicity of cross referencing with certified and other documents.</p>
7.	ExA NSC	<p>Requirement 5</p> <p>In the hearing the ExA noted that requirement 5(5) had been added to the dDCO to require a construction workers travel plan (CWTP) for works 26, 28 and</p>	<p>The Applicant confirmed that this had been brought up in discussion with Roger Willmott and Emma Scofield during the ongoing SoCG negotiations. It was initially believed with the adoption of Requirement 30, the provision under Requirement 5 wasn't considered necessary for works in NSC's</p>	<p>Requirement 5 has been revised to reflect the position of the relevant planning authority in the dDCO submitted for Deadline 6.</p>

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		<p>29 which related to Bristol City Council's (BCC) jurisdiction.</p> <p>The ExA queried why the CWTP was not also required for NSC's jurisdiction?</p> <p>NSC mentioned they were equally keen to adopt the CWTP for works in their jurisdiction and perhaps it was an omission by the Applicant.</p> <p>The ExA also queried whether the draft of Requirement 5 should be amended to include the CTMP to the list of construction management plans in the following wording: "that part of the authorised development must be carried out in accordance with the code of construction practice and the Master CEMP"?</p>	<p>jurisdiction. However, the intention is now to revise the draft for requirement 5(3) to ensure a CWTP was needed at each stage to cover both local authorities which would redress the distinction between BCC and NSC. The Applicant confirmed that the revised draft would be sent out ahead of ISH5 to allow the local authorities to respond.</p> <p>The Applicant confirmed that the revised wording relating to the CTMP in Requirement 5 was a possibility. The Applicant advised that instructions would be taken and the revised draft considered.</p>	
8.	ExA NSC	<p>Requirement 6 and 7</p> <p>It was noted that Requirement 6 covered the landscaping for works number 1 and 1A. While Requirement 7 covered landscaping for the rest of the scheme with the exception of requirement 7(3) that excluded landscaping for works 1B and 1C.</p> <p>Work 1B provided for 796 meters of new railway at Pill. While work 1C is provided</p>	<p>The Applicant confirmed that there is no landscaping for the works at Pill Junction and Portbury Junction. Any landscaping that will be provided along that part of the authorised development would be covered by the requirements relating to Pill Station. Overall, there was believed to be no landscaping required for work 1B and 1C. However, the applicant agreed to check and confirm the position for deadline 6.</p>	<p>The Applicant has reviewed Works 1B and 1C and the associated need for landscaping following the hearing and has discussed the issue with the relevant planning authority. The Applicant believes that, as the railway landscape plans show the reseeded of an existing railway embankment on operational railway, that the landscaping requirements need not refer to Works 1B and 1C. the dDCO submitted for Deadline 6 reflects this.</p>

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		<p>to establish the realignment of the existing railway.</p> <p>The ExA queried why works 1B and 1C aren't covered in the landscaping requirement?</p> <p>NSC confirmed they would conduct further due diligence on the works and confirm the position with the panel at deadline 6.</p>		
9.	ExA NSC	<p>Requirement 8</p> <p>The ExA noted that the time periods for temporary fencing under Requirement 8 (which would be removed to the satisfaction of and in accordance with the time periods approved by the LPA) differed from Requirements 20 and 21 that would require the fencing's removal six months after completion of works.</p> <p>The ExA's view was that there could be greater consistency and queried whether the same wording in Requirement 20 and 21 could be adopted for Requirement 8?</p> <p>NSC expressed concern that it would be simpler to provide a set time period for the removal of temporary fencing. The ExA asked NSC to consider the position</p>	<p>The Applicant confirmed due consideration had been given to the draft for the requirement. There was an issue that the need for the fencing differs in purpose, including to protect trees or for ecological mitigation which may require different time periods. The degree of flexibility was designed to agree the works on a stage by stage basis with the LPA to provide greater clarity for the project.</p> <p>The Applicant agreed that the adoption of a timetable agreed at the relevant time would be a sensible option which should be adopted. This was provided NSC is satisfied with the requirement as worded where the timetable will be incorporated into the requirement. The Applicant was to consider whether the strict six month time period proposed by NSC would be appropriate.</p>	The Requirement has been updated.

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		<p>further following the hearing. NSC confirmed they would accept the proposal for a timetable within Requirement 8.</p> <p>The ExA then queried if the works are kept as drafted whether a timetable should be included for their removal?</p>		
10.	ExA NSC	<p>Requirement 11</p> <p>The ExA noted that Requirement 11 on surface and foul water drainage has been amended but the additional wording agreed with North Somerset Levels Internal Drainage Board (NSLIDB) (REP3-030) has not been incorporated into the current draft.</p> <p>The proposed wording outlined the addition of (4) in the requirement: 'the surface water drainage system will be implemented and thereafter managed and maintained in accordance with the approved details for the lifetime of the development'.</p> <p>The ExA asked why the current draft had omitted the agreed revision. Are these to be submitted to the version at deadline 6?</p>	<p>The Applicant believes there were different versions of the requirement to manage and maintain the facilities. These versions came from the lead local flood authority, the Environment Agency (EA) and the internal drainage board. It was believed that the Applicant used the Internal Drainage Board's proposed wording for the requirement to inform the draft. The Applicant will reconsider the proposed versions and any comments from the lead local flood authority on the matter would be welcomed.</p>	<p>Requirement 11 has been amended to reflect NSLIDB's comments.</p>

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		NSC had no concerns on Requirement 11.		
11.	ExA	<p>Requirement 12</p> <p>Requirement 12 refers to the time period specified in the arboriculture methods statement for the removal of temporary fencing at this stage. The ExA thought that if the works have been completed the temporary fencing for the protection of trees wouldn't be required six months down the line.</p> <p>The ExA queried whether it would be easier to amend this to require the removal of fencing six months after the cessation of works?</p>	The Applicant believe there may be elements for protection that fall within more than one stage in which a stage by stage approval of works may be a better approach where the LPA would be in control of the time period.	The Applicant has no further comments.
12.	ExA	<p>Requirement 14</p> <p>The Applicant informed the ExA that further amendments were proposed for Requirement 14. The ExA queried what further amendments the applicant intended to make to requirement 14?</p>	The Applicant confirmed that Requirement 14 relating to the Avon Gorge Woodland Special Area of Conservation (SAC) would be amended to strengthen the link between the requirement and the landscape and visual impacts assessment (LVIA) chapter. The proposed wording was to be discussed at the ISH5 on Environmental Matters.	The Requirement has been updated. Please see the Applicant's summary of oral submissions for ISH 4 on the draft Development Consent Order (dDCO) held virtually on Tuesday 2 March 2021
13.	ExA	Requirement 17	There were no comments from the Applicant.	The Applicant has no further comments.

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		<p>This requirement related to contaminated land and ground water. The ExA confirmed the requirement had been revised to reference items 4 and 5 at the request of the EA.</p> <p>Are the LPAs and lead local food authorities content with the requirement as drafted?</p> <p>Both LPAs confirmed that the requirement was consistent with the normal approach that is taken with respect to these sites.</p>		
14.	ExA	<p>Requirement 18</p> <p>This relates to the works at Winterstoke Road in Bristol which had been amended at deadline 5 to include requirement 18(2) 'the detail design required by paragraph 1 is to be submitted to the relevant planning authority and must be substantially in accordance with the Ashton Vale Road and Winterstoke Road Highway Works Plan. Is BCC content with the revised requirement?</p> <p>BCC confirmed their assent to current wording of the requirement.</p>	There were no comments from the Applicant.	The Applicant has no further comments.

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15.	ExA	<p>Requirement 25</p> <p>In the hearing the ExA noted the inclusion of Requirement 25(2) which specified the fencing for work 26, the Clanage Road Depot, should be Paladin. The ExA asked as a result of Requirement 31, that deals with the Clanage Road Depot, whether it would be more appropriate to include the use of paladin fencing within Requirement 31 and exclude works 26, 26A and 26B from this requirement?</p> <p>BCC confirmed that for clarity reference to the fencing could be mentioned in Requirement 31 to aid in the discharge of the requirement.</p> <p>The ExA noted that the current draft of Requirement 25(3) stated that 'all permanent fencing must be installed in accordance with the details and retained thereafter'. The panel queried the timescale for Requirement 25(3) on whether it should reference a timescale for implementation of the fencing, whether it should follow Requirement 25 that states it would be implemented prior to the first commercial use of works 1, 1A, 1B and 1C and whether the fencing will need to be in place prior to the railway operates?</p>	<p>The Applicant believed the work could be dealt with in either manner. The Applicant expressed a preference to keep the fencing in one place but there would be no objection to a discussion of the fencing in the draft requirement for the Clanage Road depot.</p> <p>The Applicant confirmed that the fencing would need to be in place before the branch line was operational and that the dDCO could include a timetable for its installation.</p> <p>There further proposed changes would be made to the Requirement 25. The first relates to Requirement 25(2) that will outline where fencing has not been covered by a stage it would need to be in accordance with the general arrangement plans. These plans specify the type of fencing that is referred to in the ES which would highlight with particular importance the extent of the proposals on sensitive areas and cement the link between the LVIA chapter to the details on fencing.</p> <p>The second proposed amendment related to Requirement 25(4) that ties Network Rail (NR) to types of fencing. It was proposed that the requirement would be reworded to provide greater flexibility for NR to implement different fencing in the event that safety precautions need to be taken. This would prevent the need to attain further planning approval for the different fencing where safety issues would need to be dealt with swiftly for operational safety reasons.</p>	<p>The fencing provision for Clanage Road is now in requirement 31.</p> <p>Requirement 25 has also been updated to reflect discussion at the hearing.</p>

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		<p>The ExA asked the applicant to discuss the further proposed amendments to Requirement 25.</p> <p>BCC states that it would welcome the added clarity if the requirement mentioned 'prior to first commercial use' of works 1 and 1a.</p>		
16.	ExA	<p>Requirement 27</p> <p>The ExA mentioned the requirement had been updated to include the onsite energy generation for the design. Is NSC content with the draft of the requirement?</p> <p>NSC confirmed that the requirement reflected the councils' request and was aligned with their commitments to climate change.</p>	There were no comments from the Applicant.	The Applicant has no further comments.
17.	ExA	<p>Requirement 30</p> <p>The ExA noted that Requirement 30 related to the works for the M5 Junction 19 which has omitted Work 25 for the reconstruction of Quarry Bridge 2, the temporary construction compound and</p>	The Applicant outlined that access to works for the M5 Junction 19 is predominately sought by rail as opposed to road access which will directed along the Portway, the A370 and towards Clanage Road. The applicant, therefore, considered that the route would generate small amounts of traffic which wouldn't	<p>The Applicant believes Work Nos 25 and 25A will be accessed from Bristol and need not be included within requirement 30.</p> <p>The works are small in scale and as a result journeys to and from the work are unlikely to</p>

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		<p>temporary ramp for construction access at Parson Street to Royal Portbury Dock railway as shown on the works plans.</p> <p>The ExA queried why it was the only work in NSC's jurisdiction that was not included in the Requirement 30 list?</p> <p>NSC confirmed that they had no particular issue with work 25 being excluded from the list, but the position would be confirmed in their responses at deadline 6.</p>	<p>significantly affect Highways England to necessity the inclusion of the works in Requirement 30.</p>	<p>materially affect the operation of Junction 19 of the M5.</p>
18.	ExA	<p>Requirement 31</p> <p>The ExA noted the update to Requirement 31 at the request of the EA which relates to Clamage Road.</p> <p>BCC then made the representation that the requirement should be amended from 'if relevant' to ' and the lead local flood authority' as it would be relevant for the lead local flood authority to sign off the flood plan given that it falls within their responsibilities on emergency evacuation planning.</p>	<p>The Applicant agreed to the amendment proposed by BCC and outlined that the draft wording of paragraph 2.7.6 of the CEMP would be revised along with Requirement 31 for storage.</p>	<p>Article 31 has been amended in the latest dDCO.</p>

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		<p>The ExA asked for comments on the proposed amendment from the Applicant.</p>		
19.	ExA	<p>Requirement 33</p> <p>The ExA outlined that the new Requirement 33 had been added as a result of the removal of work 27 being removed from the order, which was added at the request of the EA. The ExA queried whether the LPAs had any points to raise for the requirement?</p> <p>NSC confirmed there was no issue with the requirement.</p>	<p>There were no comments from the Applicant.</p>	<p>The Applicant has no further comments.</p>
20.	ExA	<p>Requirement 36</p> <p>This requirement deals with anticipatory discharge of requirements before the order comes into force.</p> <p>The ExA queried what Requirement 36 relating to anticipatory steps towards the discharge of any requirement achieves and why it was required?</p> <p>NSC outlined that they hadn't been clear on the significance of the requirement. But, as NSC are both the applicant and</p>	<p>Requirement 36 has been drafted for clarification in the dDCO. The Applicant intends to take actions to discharge certain requirements, such as ecological mitigation, before the order is made and believed that Requirement 36 would give these works the appropriate credit once they had been completed.</p> <p>The applicant believed the provision had been considered within other orders to meet the test and that it was necessary at a previous stage to discharge ecological works, trees and fencing which can be undertaken at an earlier stage with the ability</p>	<p>Please see response to item 15 of Hearing Action Points arising from the Issue Specific Hearing 4 on the draft Development Consent Order (dDCO) held virtually on Tuesday 2 March 2021</p>

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		<p>the local planning authority, it was confirmed that NSC would take any reasonable proposition that was put to the authority to state that works have been undertaken and that these should be taken into account.</p> <p>BCC agreed with the position of NSC.</p> <p>The ExA further queried whether it meet the test for requirements?</p> <p>The ExA believed that any work carried out at risk would be taken into account when discharging requirements as preparatory work would be formerly submitted to the LPA for approval. How does the requirement help the applicant discharge these works early as drafted?</p> <p>The ExA requested further clarification and reasoning from the Applicant on the requirement which is required for deadline 6.</p>	<p>to access NR's land. Therefore, it was considered to be a useful clarification.</p> <p>The Applicant also contended that given the central government's support for the scheme to progress swiftly it was seen as an important mechanism to recognise the discharging of requirements that have been or will be undertaken at risk.</p> <p>The works assumes that development consent is forthcoming, rather than abortive, in which the LPA's would be aware that the work is being undertaken to purposely discharge the requirements. The Applicant commended the provision to the ExA.</p>	
21.	ExA	<p>Requirement 37</p> <p>This requirement deals with applications made under the requirement. The requirements states 'the day immediately following that on which further information is being supplied by</p>	<p>The Applicant agreed that the requirement needed to be amended.</p>	<p>The Applicant has amended the requirement in the latest dDCO accordance with the ExA's comments in the hearing.</p>

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		<p>the undertaker under paragraph 39 (further information)'. The ExA sought clarification whether 37(1)(b) should be requirement 38 rather than paragraph 39 because there are no paragraphs in the DCO, Requirement 38 is further information and Requirement 39 is appeals?</p>		
22.		<p>Requirement 40 This requirement relates to the interpretation of Schedule 2 of the dDCO. The ExA queried why these definitions were not included within Requirement 1 and why it needed to be a standalone requirement?</p>	<p>The Applicant believed it would be better to head 'Interpretation of Schedule 2' as 'Interpretation of Part 2'. This was drafted as a standalone set of definitions as these did not appear elsewhere in the order. The Applicant was willing to deal with it in either way, but contended that it would be neater if they remained in place and headed the definitions as 'Interpretation of Part 2 of Schedule 2'.</p>	<p>The Applicant has amended the heading in the latest dDCO</p>
Agenda Item 4: Schedule 17 of the DCO (Certified Documents and Explanatory Note)				
23.	ExA	<p>General comments and section drawings The ExA reiterated that deadline 7 was the final date for submission of the complete list of certified documents, which were required to reference the</p>	<p>The Applicant noted the need to remove the reference to the Great Crested Newt Plan. The Applicant had noted the need to amend the section drawings referenced prior to the hearing and</p>	<p>The Applicant has removed reference to the Great Crested Newt Plan and has reviewed the appendix provided by the ExA on the documents to the included in Schedule 17. The Applicant will submit</p>

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		<p>correct drawing numbers and their latest versions.</p> <p>The panel referenced the need for the Applicant to remove the drawing number for the Great Crested Newt Plan in Schedule 17.</p> <p>The ExA noted the plans were included for the section drawings and asked the Applicant to clarify which section drawings had been referred to in Schedule 17. Was this the Cross Section Plans at REP5-007, the Longitudinal Alignment of Railway Section Plans at APP-016 or the Engineering Section Plans at APP-015?</p>	<p>asked to come back to the ExA on the section plans at deadline 6.</p>	<p>a fully revised schedule of certified documents for deadline 7.</p>
24.	ExA	<p>Design drawings and omitted documents</p> <p>The design drawings for the certified documents currently references the need to see Requirement 4. This means it will collect the following with the design plans: the Portishead Station plans; Trinity Footbridge; Pill Station; Pill Station car park landscaping, lighting and access plan, Pill Memorial Club bus stop, car park and construction compound; Ham Green Highways Works and Compound; Sheepway Bridge; Clanage Road Compound;</p>	<p>The Applicant agreed to the ExA's proposal of a list which would then confirm the position for the certified documents. The Applicant plans to submit an updated certified documents list at deadline 6 which would be checked with the ExA before any final amendments for completion of the list at deadline 7.</p> <p>The Applicant acknowledged the need to update version reference for the Environmental Statement in the certified documents list.</p>	<p>Please see Applicant's written response at reference 23 above. The Applicant has reviewed the position for the certified documents list and will submit a revised Schedule for deadline 7.</p>

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		<p>Portishead Station car park layout; the Wessex Water Compound and the Portbury Hundred Construction Compound.</p> <p>The ExA confirmed that is meant the Easton-on-Gordano Flood Mitigation Plan (APP-037), Surface Water Drainage Strategy for Portishead and Pill Stations haul roads and compounds, the Design & Access Statement and the NCN Temporary Work Plans were not referenced at Schedule 17.</p> <p>Are these documents captured in other documents, or should they be certified documents?</p> <p>The ExA proposed to provide the Applicant with a list of missing documents to confirm whether these are missing or whether the documents are captured elsewhere.</p> <p>The ExA also mentioned that the Environmental Statement had been referenced in accordance with the last dDCO hearing, but noted the version needed to be updated to reflect the changes to the DCO.</p>		

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25.	ExA	<p>Explanatory Note</p> <p>The ExA mentioned that the availability of physical documents for inspection was not preferential given the pandemic and asked whether these could be made available electronically and referenced as available electronically within the explanatory note for the DCO?</p>	<p>The Applicant agreed the adoption of electronically available documents and the reference to such documentation in the explanatory of the DCO was a sensible option to take forward.</p>	<p>The Applicant has added wording based the precedent of The West Burton C (Gas Fired Generating Station) Order 2020 (2020 SI No. 1148) but adapted to reflect the later Regulations now in force.</p> <p>The Applicant is discussing with the relevant planning authority whether North Somerset Council's planning website could host the relevant documents and therefore the Applicant may propose a further revision to the explanatory note at deadline 7.</p>
Agenda Item 6: Any Other Business (consents licences and other agreements)				
26.	ExA	<p>Update on highways agreement</p> <p>The ExA noted the update in regard to the impact assessment conservation payments signed by Natural England that committed the scheme to use district level licencing.</p> <p>The ExA asked the Applicant to explain how the highways agreements with BCC had moved on since the latest deadline?</p>	<p>The Applicant confirmed that drafts were in circulation and that there would be extensive discussion on the agreements in due course. It was contended that there were no difficulties with the agreements the parties simply needed to dedicate time to progress the complex agreements to completion, but the Panel's concerns had been noted by the parties.</p>	<p>The Applicant has no further comments.</p>
27.	ExA	<p>Progress on other agreements</p>	<p>The Applicant confirmed that there would be no S106 agreement as a result of the agreement with the BCC</p>	<p>The terms of the proposed letter committing the Applicant to the proposed payment and creating a</p>

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		<p>The ExA queried whether any other consents or agreements had progress since the last update? Whether the BCC compensation for tree planting had progressed? And, if there was anything to add in regard to the forthcoming S106 agreement?</p>	<p>for the tree planting contributions. The latest correspondence to finalise the agreement was sent 1 March 2021 to confirm the amount payable. The payment will take place in due course alongside an exchange of letters between the Applicant and BCC.</p>	<p>legitimate expectation of payment are largely settled. An update will be provided in the final SOCG between the Applicant and Bristol City Council which is anticipated to be finalised before Deadline 7.</p>