



MetroWest+

Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.63 ExA.FI.D7.V1 – Applicant's comments on the Report on the Implications for European Sites (RIES)

Author: Womble Bond Dickinson (UK) LLP

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The proposed Portishead Branch Line (MetroWest Phase 1) Order

Applicant's Comments on the ExA's Report on the Implications for European Sites (RIES)

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1. Introduction

- 1.1. The Examining Authority (**ExA**) has prepared the Report on the Implications for European Sites (RIES) compiles documents and signposts information provided within the DCO application, and the information submitted throughout the Examination by both the Applicant and interested parties (IPs), up to Deadline 6 of the Examination (15 March 2021) in relation to potential effects to European Sites.
- 1.2. The following table sets out the Applicant's suggested changes to the RIES. These changes are mainly to clarify document references and the Applicant's position with regard to the compensation proposals.

	RIES	Page	Suggested amendments (in red)	Reason/comments
1.	Table 2.1: Note in column entitled "Distance to the DCO Order Limits" in relation to Severn estuary SPA, Severn estuary SAC and Severn estuary Ramsar Site: "0.08 km (Nb functionally linked land to the SPA and Ramsar within 650m)"	4	"0.08 km" (Nb functionally linked land to the SPA and Ramsar within 650m)"	The table lists European sites screened into the HRA and provides their distance to the DCO Order Limits as that is relevant to screening. The distance between functionally linked land and development sites does not serve the same purpose and so the reference to the functionally linked land for the Severn Estuary SPA and Ramsar should be removed. The functionally linked habitat (used by SPA and RAMSAR species but not otherwise linked) is explained more fully in para. 3.3.1 (see below).

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2.	<p>Para 3.1.1.1:</p> <p>"Section 5.2 of the HRA Report [REP6-120] sets out the identification of potential impacts to European sites as a result of the Proposed Development, split by construction and operational phases. These are summarised below but not replicated in full:</p> <p>Construction</p> <ul style="list-style-type: none"> • Temporary habitat loss as a result of: <ul style="list-style-type: none"> - Excavations, placing of new ballast, sleepers and rails, troughing for cabling and drainage works, vegetation removal, construction compounds and haul roads; - Temporary vegetation clearance prior to re-profiling and embankments and cuttings works; - Geotechnical works in the Avon Gorge, including inspections of the rock face, installation of rock bolts and erection of catch fences; - Reconstruction and remedial works to existing bridges; • Permanent habitat loss where vegetation removal is needed for new railway infrastructure e.g. fencing, maintenance and emergency access compounds, culverts, access, telecommunications masts and signalling, and repair works to bridge and tunnel structures; • Disturbance of birds, bats and other fauna due to noise and vibration, visual disturbance, lighting and presence of construction workers, plant and machinery; and 	6	<p>"Section 5.2 of the HRA Report [REP6-120] sets out the identification of potential impacts to European sites as a result of the Proposed Development, split by construction and operational phases. These are summarised below but not replicated in full:</p> <p>Construction</p> <ul style="list-style-type: none"> • Temporary habitat loss as a result of: <ul style="list-style-type: none"> - Excavations, placing of new ballast, sleepers and rails, troughing for cabling and drainage works, vegetation removal, construction compounds and haul roads; - Temporary vegetation clearance prior to re-profiling and embankments and cuttings works; - Geotechnical works in the Avon Gorge, including inspections of the rock face, installation of rock bolts and erection of catch fences [insert new footnote below]; - Reconstruction and remedial works to existing bridges; • Permanent habitat loss where vegetation removal is needed for new railway infrastructure e.g. fencing, maintenance and emergency access compounds, culverts, access, telecommunications masts and signalling, and repair works to bridge 	Footnote added to explain the location of the areas within which proposed geotechnical works and railway infrastructure may be provided.

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	<ul style="list-style-type: none"> • Damage to flora and fauna (including aquatic) due to air pollution, pollution of watercourses and trampling. 		<p>and tunnel structures [insert new footnote below];</p> <ul style="list-style-type: none"> • Disturbance of birds, bats and other fauna due to noise and vibration, visual disturbance, lighting and presence of construction workers, plant and machinery; and • Damage to flora and fauna (including aquatic) due to air pollution, pollution of watercourses and trampling." <p>New footnote:</p> <p>"The locations and areas within which the proposed geotechnical works and railway infrastructure may be provided are identified on the General Arrangement plans submitted at Deadline 7 (Document reference 2.4, version 4)."</p>	
3.	<p>Para 3.3.1:</p> <p>"The Severn Estuary SAC, SPA and Ramsar is around 1.2 km north of the Proposed Development at its closest point but is functionally linked via the Portbury Wharf Nature Reserve (the southern end of the which adjoins the existing railway corridor between Portishead and Sheepway). The closest habitat used by SPA and Ramsar-qualifying species are the southern pools and lagoons approximately 650m from the disused line. The existing line near Pill is around 80 m from the Severn Estuary SAC, SPA and Ramsar site at its closest point. There are no works within the designated sites, however a</p>	9	<p>"The existing disused line near Pill is around 80m from the Severn Estuary SAC, SPA and Ramsar site at its closest point. There are no works within the designated sites, however a temporary cycle path diversion at Jenny's Meadow near Pill may come within 30m during the construction phase. The Severn Estuary SAC, SPA and Ramsar is around 1.2 km north of the Proposed Development at its closest point but site is functionally linked via to the Portbury Wharf Nature Reserve (the southern end of the which adjoins the existing railway corridor between Portishead and Sheepway). The closest</p>	<p>Order of text rearranged for clarity, with minor amendments. The boundary of the SAC is still coincident with the SPA and Ramsar site north of Portbury Wharf Nature Reserve, but it is only the SPA and Ramsar site that is functionally linked to Portbury Wharf Nature Reserve.</p>

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	temporary cycle path diversion at Jennys Meadow near Pill may come within 30m during the construction phase."		habitat used by SPA and Ramsar-qualifying species are the southern pools and lagoons approximately 650m from the disused line, with the boundary of the designations 1.2km to the north."	
4.	Para 4.2.8: "Further details of mitigation that provides benefit for bats are also set out in paragraphs 9.7.2 - 9.7.17 and 9.7.53 – 9.7.57 of ES Chapter 9 [AS-031]."	20	"Further details of mitigation that provides benefit for bats are also set out in paragraphs 9.7.2 - 9.7.17 and 9.7.53 – 9.7.57 of ES Chapter 9 [AS-031] [REP6-078]."	REP6-078 is the latest version of ES Chapter 9 (Version 3)
5.	Para 4.3.8, Footnote 9 : "General locations of the rock faces are shown on Figure 2 of [AS-027] and a “realistic worst case approach” to determine the potential impact of geotechnical works is set out in Annex D of [AS-044]."	23	"General locations of the rock faces are shown on Figure 2 of [AS-027] [REP6-120] and a “realistic worst case approach” to determine the potential impact of geotechnical works is set out in Annex D and Annex E of [AS-044] [REP6-136]."	REP6-120 is the latest version of the HRA Report (Version 3) REP6-136 is the latest version of the AGVMP (Version 3) Annex E of the AGVMP also contains information about the potential impact of geotechnical works
6.	Para 4.3.11: "The Applicant considers the loss of rare whitebeams in paragraphs 8.3.16 – 8.3.18 and Table 8.4 of [REP6-120]. The potential impact comprises the loss or coppice of 27 whitebeam tress, summarised as follows: • 12 Avon whitebeam (10 removed, 2 coppiced), 29% of the world and SAC population; • 1 Wilmott's whitebeam removed (1% of the world and SAC population);	23	"The Applicant considers the loss of rare whitebeams in paragraphs 8.3.16 – 8.3.18 and Table 8.4 of [REP6-120]. The potential impact comprises the loss or coppice of 27 whitebeam trees, summarised as follows: • 12 Avon whitebeam (10 removed (including 1 contingency), 2 coppiced), 29% of the world and SAC population; • 1 Wilmott's whitebeam removed (1% of the world and SAC population);	Wording added to explain that the whitebeam loss figures in para 4.3.11 include provision for contingency losses.

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	<ul style="list-style-type: none"> • 6 Leigh woods whitebeam removed (2% of the world and SAC population); • 1 Grey-leaved whitebeam removed (0.2% of the world population and 2% of the SAC population); • 5 round-leaved whitebeam (4 removed and 1 coppiced) (0.6% of the world population); and • 2 Bristol whitebeam (1 removed and 1 coppiced), 0.7% of the world and SAC population." 		<ul style="list-style-type: none"> • 6 Leigh woods whitebeam removed, including 1 contingency (2% of the world and SAC population); • 1 Grey-leaved whitebeam removed as a contingency (0.2% of the world population and 2% of the SAC population); • 5 round-leaved whitebeam (4 removed (including 1 contingency) and 1 coppiced) (0.6% of the world population); and • 2 Bristol whitebeam (1 removed as a contingency and 1 coppiced), 0.7% of the world and SAC population. <p>The five trees included for contingency purposes are not predicted to be lost but their inclusion ensures full compensation in the event that any unexpected losses occur through detailed design and construction tolerances.</p>	
7.	<p>Para 6.0.4, Bullet point 4 (Over-riding socio economic benefit) Footnote 12:</p> <p>"In respect of non-priority habitat only, see paragraph 6.0.3 of this RIES"</p>	29	"In respect of priority and non-priority habitat only , see paragraph 6.0.3 of this RIES"	Where socio-economic reasons satisfy the IROPI tests for priority habitat, as confirmed in the most recent Defra guidance (see paragraph 6.2.0 of the RIES), over-riding socio-economic benefit can also be IROPI for priority habitat.
8.	<p>Paras 7.1.7 – 7.1.9</p> <p>"7.1.7 At the point of DCO submission, the delivery of compensatory measures within NR land ownership was intended to “provide NE with the ability to approve whichever of the areas of compensation identified by the DCO Scheme it considers would best compensate for the predicted harm, taking into account the stage</p>	32	<p>7.1.7:</p> <p>"At the point of DCO submission, the delivery of compensatory measures within NR land ownership was intended to “provide NE with the ability to approve whichever of the areas of woodland compensation on NR and Forestry Commission (FC) land identified by the</p>	Although prior to the DCO submission, the adaptive approach had been developed solely in respect of sites on NR land, the DCO application advanced the adaptive approach in respect of sites on both NR and FC land.

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	reached by NR in its own management plan". The Applicant referred to this as an "adaptive approach" to delivery of compensation. The Applicant's view remains that the SoS could "have certainty that the necessary compensatory measures would be secured, whilst also being satisfied that the conservation measures that NR is required to take in order to maintain or restore favourable conservation status within that part of the SAC that it owns will be delivered in accordance with the management plan that NE will oversee independently of the DCO Scheme" (paragraphs 11.1.4 – 11.1.5 of [REP6-120]).		DCO Scheme it considers would best compensate for the predicted harm, taking into account the stage reached by NR in its own management plan". The Applicant referred to this as an "adaptive approach" to delivery of compensation. The Applicant's view remains that the SoS could "have certainty that the necessary compensatory measures would be secured, whilst also being satisfied that the woodland conservation measures that NR is required to take in order to maintain or restore favourable conservation status within that part of the SAC that it owns will be delivered in accordance with the management plan that NE will oversee independently of the DCO Scheme" (paragraphs 11.1.4 – 11.1.5 of [REP6-120]).	
9.	Para 7.1.9: "As a late submission to Deadline 6 of the Examination, the Applicant submitted a copy of completed agreement between themselves and the FC allowing for the delivery of the proposed woodland compensation entirely on FC land [REP6-150]. The location of the FC land to which the agreement relates is shown at Annex M of the AGVMP [REP6-137] and as Appendix 1 to the agreement itself."	32	"As a late submission to Deadline 6 of the Examination, the Applicant submitted a copy of completed the final agreement between themselves and the FC allowing for the delivery of the proposed woodland compensation entirely on FC land [REP6-150]. The location of the FC land to which the agreement relates is shown at Annex M of the AGVMP [REP6- 137136] and as Appendix 1 to the agreement itself."	Please note: the agreement submitted at Deadline 6 was a final, agreed version rather than a completed agreement. The engrossment has been executed and sealed by both the Applicant and FC. Copies of both parts as executed and sealed will be submitted (with commercially sensitive information redacted) at Deadline 7. Completion will take place and the completed agreement will then be submitted. REP6-137 is the tracked changes version of the AGVMP, version 3. REP6-136 is the final clean version.

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10.	<p>Para 7.1.11:</p> <p>"Both options for positive management (either on FC Land, or NR land) are retained in the DCO by the Applicant and could be delivered under the AGVMP (see section 4.1.2 of [REP6-136])."</p>	33	<p>"Both eOptions for positive woodland management (either on FC Land, or on NR land or on both) are retained in application documents including the AGVMP (see section 4.1.2 of [REP6-136]). However, Requirement 14 and the AGVMP commit the Applicant to delivery of the positive woodland management measures on FC land unless the Secretary of State determines otherwise (see paragraphs 4.1.2 and 8.1.5 of [REP6-136]). Confirmation that FC land could be secured by the Applicant was not possible until an advanced stage of the Examination and so the option of using NR land for some or all of the positive woodland management was retained in the AGVMP. If the Secretary of State determined that it would be appropriate to progress some woodland compensation on NR land then it would be possible for that to be provided for (e.g. through an amendment to Requirement 14) although Natural England have advised against this and it is not the preferred outcome of the Applicant."</p>	<p>The latest version of the AGVMP [REP6-136] in combination with Requirement 14 commit the Applicant to the delivery of all positive woodland management on FC land unless the SoS determines otherwise. Had the FC land been secured at an earlier stage of the DCO process or the examination then the application documents could have been amended so as to remove the NR alternatives. Unfortunately, this was not possible and so the NR alternatives had to be retained in the event that the Applicant was not able to commit to delivering compensation on FC land. However, as the terms of the agreement were agreed at Deadline 6 it was possible to make amendments to the final version of the AGVMP, submitted at Deadline 6, so as to stipulate that the positive management will be delivered on FC land unless the Secretary of State determines otherwise.</p>
11.	<p>Para 7.1.12:</p> <p>"NE expressed a clear preference for delivery of compensation on FC land as set out in 6.1.8 of the SoCG [REP6-146] in contrast with reservations regarding the delivery of the compensation if located within NR Land (as set out in paragraphs 7.1.3 – 7.1.5 above).</p>	33	<p>"NE expressed a clear preference for delivery of compensation for loss of Tilio-Acerion woodland solely on FC land as set out in 6.1.8 of the SoCG [REP6-146] and continues to have reservations regarding the delivery of the compensation if located</p>	<p>Words inserted for clarity.</p>

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			within NR Land either in whole or in part (as set out in paragraphs 7.1.3 – 7.1.5 above)."	
12.	Para 7.1.16: "The Applicant would be responsible for the delivery of the AGVMP regardless of whether the NR or FC land would provide the compensatory measures (including implementation and monitoring provisions in paragraphs 48, 51 and 52 of the legal opinion [REP6-133])."	33	"The Applicant would be responsible for the delivery of the AGVMP regardless of whether the NR or FC land would provide the woodland compensatory measures (including implementation and monitoring provisions in paragraphs 48, 51 and 52 of the legal opinion [REP6-133])."	Word inserted for clarity.
13.	Para 7.2.3 "The proposed compensatory package comprises planting of 54 whitebeam saplings to replace those lost (a 2:1 replacement ratio). The nature of the compensation measures has not been subject to particular dispute during the Examination, however representations were made by NE relating to the location and legal specifications of the measures ([REP2-045], [REP3-017], [REP5-042])."	33	"The proposed compensatory package comprises planting of 54 whitebeam saplings to replace those lost (a 2:1 replacement ratio, including contingency provision). The nature of the whitebeam compensation measures has not been subject to particular dispute during the Examination, however representations were made by NE relating to the location of two of the proposed planting sites on NR land and legal specifications of the measures ([REP2-045], [REP3-017], [REP5-042])."	The nature of the whitebeam compensation measures has not been subject to dispute – it is only the locations of two of the four proposed whitebeam planting sites on NR land that have been under discussion with NE and resolved through alternative provision for two of the NR sites on FC land.
14.	Para 7.2.5, Footnote 13: "The ExA notes that [REP2-045] refers to Nightingale valley (b) site as being not appropriate whereas, based on later submissions eg [REP4-017], [REP6-120]. [REP6-146], it is understood that Nightingale valley (a) site is the one for which NE expressed concern."	34	"The ExA notes that [REP2-045] refers to Nightingale Valley 1 (b) site as being not appropriate whereas, based on later submissions eg [REP4-017], [REP6-120]. [REP6-146], it is understood that Nightingale Valley 1 (a) site is the one for which NE expressed concern."	The ExA is correct – Nightingale Valley site 1 (b) is acceptable to NE, but NE have concerns over site 1 (a). Amendments are proposed as the Nightingale Valley sites are referred to in the AGVMP and other application

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				documents as sites 1(a) and 1(b) rather than sites (a) and (b).
15.	<p>Para 7.2.8:</p> <p>"The proposed planting packages are summarised in Table 11.1a of the HRA Report, [REP6-120], showing that sites identified as site 1a, 1b, 2 and 3 are associated with package 1, and sites 1b, 3 and 4 are associated with package 2. The characteristics of these sites are summarised in paragraph 11.5.5 and 11.5.9 – 11.5.14 of the HRA Report [REP6-120] and described further in Annexes H and M of the AGVMP [REP6-146] (including location plans at Figures 2-6 of Annex H). The DCO allows for the delivery of either package under the AGVMP as secured by DCO requirement 14. At ISH 3 [EV-010] the ExA asked whether or not a 'hybrid' solution between packages 1 and 2 could be delivered, but the Applicant confirmed that this is not proposed [REP4-017] (although the ExA notes that the Applicant did not and has not expressly excluded this possibility¹⁴)."</p> <p>Footnote 14:</p> <p>"The ExA notes that the AVGMP [REP6-136] seems to refer to an "either or" situation with regards package 1 and package 2, and that Requirement 14(6) states that "<i>The mitigation and compensation measures specified in the Avon Gorge Vegetation Management Plan must be carried out in accordance with the timetables set out in that document.</i>"</p>	34/35	<p>"The proposed planting packages are summarised in Table 11.1a of the HRA Report, [REP6-120], showing that sites identified as site 1a, 1b, 2 and 3 are associated with package 1, and sites 1b, 3 and 4 are associated with package 2. The characteristics of these sites are summarised in paragraph 11.5.5 and 11.5.9 – 11.5.14 of the HRA Report [REP6-120] and described further in Annexes H and M of the AGVMP [REP6-146] (including location plans at Figures 2-6 of Annex H). The DCO allows for the delivery of either package under the AGVMP as secured by DCO requirement 14. At ISH 3 [EV-010] the ExA asked whether or not a 'hybrid' solution between packages 1 and 2 could be delivered, but the Applicant confirmed that this is not proposed [REP4-017] (although the ExA notes that the Applicant did not and has not expressly excluded this possibility¹⁴)."</p> <p>Footnote 14:</p> <p>"The ExA notes that in the latest version of the AVGMP [REP6-136] the Applicant has committed to deliver whitebeam planting package 2 unless the Secretary of State determines otherwise (see paragraphs 4.1.2, 5.7.5 and 8.1.5 of [REP6-136]) seems to refer to an "either or" situation with regards package 1 and package 2, and that Requirement 14(6) states that "<i>The mitigation and compensation measures</i></p>	<p>The whitebeam planting sites are described in Annex H but not in Annex M of the AGVMP [REP6-136], which contains the Woodland Management Plan for woodland compensation on Forestry Commission land.</p> <p>In the latest version of the AGVMP (Version 3), the Applicant has committed to deliver whitebeam planting package 2 unless the SoS determines otherwise.</p>

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			<p><i>specified in the Avon Gorge Vegetation Management Plan must be carried out in accordance with the timetables set out in that document."</i> The combination of Requirement 14 of the DCO and the AGVMP [REP6-136] commits the Applicant to the delivery of whitebeam planting package 2. However, confirmation that FC land would be secured by the Applicant was not possible until Deadline 6. Therefore, whitebeam planting package 1 was retained in the AGVMP and could be delivered if the Secretary of State determined that this option should be progressed (although this would be contrary to the preference of Natural England).."</p>	
16.	<p>Para 7.3.6:</p> <p>"The Applicant responded to these points in their oral case and response to representations at ISH3 [REP4-017] and [REP4-018], clarifying their position that compensation for loss of the grassland (in the form of positive management) could only be provided for on NR land as only this grassland is within their ownership."</p>	36	<p>"The Applicant responded to these points in their oral case and response to representations at ISH3 [REP4-017] and [REP4-018], clarifying their position that compensation for loss of the grassland (in the form of positive management) could only be provided for on NR and/or NT land as only this qualifying grassland is within their ownership does not occur on FC land."</p>	<p>The Applicant could not provide "offsite" grassland compensation because there is no qualifying grassland available on FC land.</p>