

Date: 23 November 2020
Our ref: 306722
Your ref: TR040011



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Dear Sir/Madam

NSIP Reference Name / Code: TR040011 The Portishead Branch Line (Metrowest Phase 1) Order – written representations from Natural England

Thank you for your consultation on the above NSIP proposal.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Summary of Written Representations

Natural England previously set out its key outstanding concerns on the Metrowest project through its Relevant Representations, which related to the measures proposed to compensate for a direct loss of habitat within a European site. While the applicant has since made progress in responding to those concerns by developing an alternative package of compensation measures, the agreement with Forestry Commission that would secure those measures is not yet signed. Once signed, Natural England considers that effective compensation measures could be secured. In the interim, it is understood that the applicant has presented different packages of compensation measures.

1. Introduction

- 1.1. Natural England's advice in these written representations is based on information submitted by North Somerset Council in support of its application for a Development Consent Order ('DCO') in relation to construction of a new railway and passenger service, utilising the trackbed of the disused railway and the existing freight line to Portbury Dock.
- 1.2. Natural England has had regular and constructive engagement with the applicant throughout the pre-application period. We have developed a Statement of Common Ground with the applicant which we understand has been submitted to the ExA in draft.

- 1.3. Our responses to the ExA's preliminary questions can be found in this document at Annex 1.
- 1.4. Our advice has focused on the national and European sites that could be affected and those protected species that may be subject to licensing requirements.

2. Natural environment interests potentially affected by this application

- 2.1. Part of the development footprint for the Metrowest project lies within Avon Gorge Woodlands Special Area of Conservation (SAC) and Site of special Scientific Interest (SSSI), and it is also in close proximity to the Severn Estuary Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site, and North Somerset and Mendip Bats SAC, all of which are internationally and nationally protected nature conservation sites.
- 2.2. A number of protected species are likely to be affected, some of which will be subject to licensing requirements.

3. Internationally protected nature conservation sites

Avon Gorge Woodlands SAC

- 3.1. As well as being a nationally and internationally protected wildlife asset, containing many rare plants, the Avon Gorge is recognised as being highly valued and important in landscape, geological and cultural terms.
- 3.2. Likely significant effects on the Avon Gorge Woodlands SAC have been identified through Habitats Regulations Assessment screening and been subject to an Appropriate Assessment. Natural England agrees with the assessment of effects on qualifying features of the SAC and considers that a precautionary approach has been taken. The project involves the direct loss of 0.78ha of the Avon Gorge Woodlands SAC. This is due to the increased area need for maintenance of a passenger line over a freight line, and breaks down as 0.71ha of the ancient woodland qualifying feature and 0.07 ha of limestone grassland qualifying feature. The works will also result in the loss of 27 individual rare Whitebeam trees.
- 3.3. For the Avon Gorge Woodlands SAC it concludes that while some effects can be minimised, the direct loss of ancient woodland and rare grassland habitat cannot be fully mitigated and therefore the project will adversely affect the integrity of the SAC. Natural England supports these conclusions.
- 3.4. The range of mitigation and compensation measures that relate to the SAC are covered in the Avon Gorge Vegetation Management Plan (AGVMP) and summarised in the shadow HRA.

Avoidance and mitigation

- 3.5. Some changes to the project, while not introduced with the purpose of addressing ecological impacts, have reduced the scale of likely effects. Primarily this relates to the lowering of speed and frequency of the rail service from that which was envisaged earlier in the pre-application phase, which means that less of an area is needed for construction and maintenance activity than was originally envisaged.
- 3.6. The Appropriate Assessment has also identified avoidance and mitigation measures that have been introduced to reduce and limit effects and which chiefly relate to the construction phase of the project. Natural England supports these measures.

3.7. Fencing needed to maintain safety on the line will have the incidental positive effect of limiting illegal and sometimes damaging public access to the site, as noted in Natural England's Site Improvement Plan. That said the potential landscape and visual impacts of the fencing on the Gorge – an important environmental asset to local communities – should also be given weight in determining the design and operation of the project.

Compensation

3.8. After consideration of avoidance and mitigation measures the Appropriate Assessment (AA) has concluded that the project will result in an adverse effect on integrity of the SAC. Natural England supports this conclusion. Whilst, as identified in the AA, there is some scope for effects on the ancient woodland and limestone grassland habitat to be minimised, the direct loss of qualifying features for these habitats cannot be mitigated.

3.9. The applicant has therefore, through the derogation provided for under article 6(4) of the Habitats Directive, sought to demonstrate that there are no feasible alternatives to the project, that there are imperative reasons of overriding public importance (IROPI) for the project to proceed, and that compensatory measures can be secured that maintain the overall coherence of the Natura 2000 network.

3.1. Natural England has been involved in ongoing discussions with the applicant regarding the efficacy of proposed compensatory measures and the extent to which they meet the requirements of the Habitats Directive. The compensation measures involve areas of positive woodland and limestone grassland management, and whitebeam planting. We have set out two key concerns, which are summarised below.

3.2. The first of these relates to the positive management proposed within the SAC on Network Rail land. The positive management proposed within the SAC to benefit woodland and grassland features will target invasive species removal – one of the major ecological issues affecting condition of the SAC – and involve removal of some large trees such as the non-native holm oak. While this positive management is desirable, and acceptable and proportionate in terms of its scale, it risks conflating the purposes of Article 6(4) measures required to address adverse effects on integrity of the SAC with Article 6(1) measures which require the site owner to manage the site towards favourable condition. [Commission guidance](#) on this point, for example, states that *'Compensatory measures should be additional to the actions that are normal practice under the Habitats and Birds Directives or obligations laid down in EU law. For example, the implementation of conservation measures under Article 6(1), or the proposal/designation of a new area already inventoried as being of Community importance, constitute 'normal' measures for a Member State. Thus, compensatory measures should go beyond the normal/standard measures required for the designation, protection and management of Natura 2000 sites'* [p60]. In our opinion improvements of this nature within a SAC therefore need to be clearly over and above what would normally be expected of the site owner to achieve favourable condition.

3.3. The second concern relates to risk that some of Whitebeam planting sites proposed contain habitat features that are associated with the SAC/SSSI and so new planting would be likely to adversely affect those features. We support the focus on planting whitebeams, a primary feature of the SAC woodland, many species of which are endemic to the Avon Gorge. We also support the principle of replacing lost whitebeam on at least a 2 for 1 basis. However, while we are reasonably confident that two of the sites are likely to be suitable we do not consider that Miles Dock and Nightingale Valley (b) are appropriate locations for this type of compensation for the reason given above.

3.4. In response to these two concerns the applicant has been in discussion with the Forestry Commission about delivering compensation measures in undesignated ancient woodland adjacent to the SAC. Having discussed the proposals with the applicant Natural England is confident that delivery of the compensation measures on Forestry Commission land provides would be effective in ecological terms but also more robust in legal terms, providing clear

separation between compensation measures the applicant is required to deliver and management for favourable condition that Network Rail is obligated to carry out as a public body within the SAC.

- 3.5. Should there be a compensation package which combined measures to be delivered on FC land with those on NR land deemed to be legally robust and ecologically effective, Natural England would welcome further discussion.
- 3.6. The fact that the agreement between the applicant and FC has not yet been signed means that the applicant is keeping all options open and it is therefore not possible for Natural England to support a formally agreed package of compensation measures at this stage.

North Somerset and Mendip Bats SAC

- 3.7. Bat surveys involving radio tracking of greater horseshoe bats revealed that bats are moving between Avon Gorge and Brockley Hall Stables SSSI, a maternity roost protected as part of the North Somerset and Mendips Bats SAC. The disused line between Pill and Portishead provides an important corridor for bats, particularly in where it runs close to the M5 and development at Portbury Dock, and a day/night roost was found at the disused Pill station.
- 3.8. The assessment concludes that subject to mitigation identified being secured, an adverse effect on the integrity of the North Somerset & Mendip Bats SAC can be avoided.
- 3.9. In terms of effects on the SAC the main risks identified arise from vegetation clearance and increased lighting along the new section of line, including Pill station. Without mitigation this could cause habitat fragmentation and severance affecting foraging and commuting habitats, and by direct disturbance to lesser horseshoe bat roosts.
- 3.10. Mitigation measures will involve sensitive vegetation planting management and lighting control to ensure a dark corridor is maintained and strengthened for commuting bats.
- 3.11. Natural England considers that mitigation proposed has focused on the key risks and provided the the dark, vegetated corridor along the course of the disused line can be maintained and enhanced, will be effective and deliverable.
- 3.12. Since providing our Relevant Representations the applicant has considered the outputs of further survey work at Pill station and concluded that bats using the station are not associated with the SAC. We agree that the evidence presented supports that conclusion and while it means that the mitigation of lighting effects at Pill station is not a requirement of HRA the mitigation will be retained so as to protect the bat day/night roost at the station.

Severn Estuary European site

- 3.13. We are satisfied that significant effects on the Severn Estuary European site (s) have been ruled out through the sHRA screening on the basis of objective information, including bird surveys that suggested qualifying species of the SPA/Ramsar do not occur in significant numbers within the survey area, and an assessment of noise that appears to show that noise levels within the Severn Estuary designated site and functionally linked will be largely unaffected by the construction or operation of the new passenger service. Existing recreational use of the bird survey area was also noted.
- 3.14. The applicant has also recently provided further clarification as to the absence of hydrological connectivity between the project and the Severn Estuary SAC, and we are satisfied that Likley Significant Effects can be ruled out.

Protected species licensing

- 3.15. The applicant has sought Letters of No Impediment (LONIs) to provide reassurance on the likely needs for protected species licenses for Bats and Badgers.
- 3.16. We have issued LONIs for bats and badgers, which include some comments minor additions that would likely be included in an application.
- 3.17. The applicant has elected to use the District Level Licensing scheme recently launched in North Somerset rather than use the conventional mitigation licence approach to meet licensing requirements for great crested newts. Natural England has completed the assessment under that scheme and the applicant will shortly receive a provisional Impact Assessment Conservation Payment Certificate (IACPC), which is the equivalent to a LONI for the conventional licenising approach.

Other biodiversity and landscape interests

- 3.18. Natural England is satisfied that wider biodiversity and landscape interests have been assessed thoroughly and suitable measures included to avoid or reduce impacts have been identified in the environmental statement. We have no significant concerns, though we note the applicant's recent commitment to work with the Pill Toad Patrol to address potential impacts on common toad migration near Lodway Farm.

Should you have any questions regarding the advice above please contact me using the details below.

Kind regards

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Natural England

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Annex 1 Natural England responses to the ExA's preliminary questions

ExA question	Response from Natural England
GC.1.17	Natural England is satisfied that there is no impact pathway between the project and the Severn Estuary SAC. The applicant has provided NE with further information and clarification to demonstrate this point, including confirmation that the closest point to the SAC that ballast removal will take place is approximately 85m. We consider that the applicant has also taken reasonable steps to understand the potential hydrological connectivity between the project and the SAC, including review of historical maps and site inspections, and on the basis of objective information can justifiably exclude a Likely Significant Effect.
AQ.1.2	Natural England understands that the predicted nitrogen deposition of a maximum of 0.7 kg N Ha ⁻¹ identified in the initial air quality assessment has subsequently been revised to 0.1 kg N Ha ⁻¹ , and that the applicant is providing further explanation as to that change. While this still represents an increase for a SAC where critical loads are already exceeded, our understanding of the assessment is that the applicant has provided reasonable justification as to why effects of the project would be below the 1% threshold, alone and in-combination. That said, we would suggest the assessment findings are presented so as to clearly show the

	Process Contribution as a percentage of the relevant thresholds for NOx, N and acid deposition, alone and in combination.
BIO.1.1	Natural England can confirm that it is satisfied with the overall range of surveys completed to date and that this has provided adequate baseline information to assess ecological effects for the purposes of the DCO application. As it routinely the case with DCO applications, where draft Requirements specify or the need for other licenses and consents dictate, further survey work will be needed before certain activities take place to ensure that up to date information is used and ecological interests are protected.
BIO.1.2	Natural England was not aware of the common toad migration referred to in a number of relevant representations. We understand that the applicant, in acknowledging the need to meet its duty to protect biodiversity under the NERC Act, has committed to working with the Pill Toad Patrol to gather further evidence and agree specific avoidance and mitigation measures that will be implemented.
BIO.1.7	<p>Natural England is awaiting further engagement from NR regarding the VMP and SMS. As things stand we are not clear on progress made on the objectives set out in the VMP.</p> <p>In the event that compensation measures on NR are taken forward we agree that the ExA will require certainty that ongoing management and monitoring of mitigation and compensation measures will be secured and that further details will be needed to ensure that responsibilities between the applicant's AGVMP and NR's VMP are clearly stated.</p>
BIO.1.8	<p>Natural England has not agreed NRs VMP for the first year (2019-2020).</p> <p>In respect of the 'adaptive approach' and certainty of delivering appropriate and effective compensation measures, Natural England has discussed proposed measures with applicant through the pre-application phase. We have advised that there are two key issues in respect of the initial proposal to deliver all compensation measures within the SAC:</p> <ol style="list-style-type: none"> 1. Positive management on NR land within the SAC. The Habitats Directive makes a clear distinction between management measures under Article 6(1) aimed at achieving favourable condition, which a site owner has a duty to undertake, and measures under Article 6(4) that are required to compensate for adverse effects of a project; and 2. While two of the whitebeam planting sites within the SAC could be said to be in degraded areas that were devoid of SAC/SSSI interest features and likely to remain so, the other two locations were shown to have SAC/SSSI features already present. <p>The applicant has responded positively to this advice and sought to secure alternative locations to deliver compensation measures. Natural England supports the compensation measures now proposed for delivery on adjacent Forestry Commission land but recognises that at this stage the necessary agreement between the applicant and FC has been drafted but not yet signed. Once that agreement is signed NE will be satisfied that the package of compensation measures will be effective and certain. However, that means that at this stage, based on the compensation package proposed for NR land, Natural England's concerns remain.</p> <p>It is possible that a combination of legally-robust compensation measures on FC and NR land could be achieved.</p>
BIO.1.11	Wherever the compensation takes place the question of duration of monitoring measures partly comes back to the question about incorporation of measures into other management

	<p>plans beyond the period covered by the AGVMP. In principle, we consider that while 10 years is sufficient to cover establishment of habitat, compensatory measures should be enduring and therefore we would expect FC and/or NR management plans to include some provision for monitoring beyond the 10 year period of the AGVMP. Natural England would welcome discussion as to how we might contribute to that.</p>
BIO.1.16	<p>As stated in response to BIO 1.8, Natural England has advised the applicant that two of the whitebeam planting sites appear to be unsuitable for providing compensation because they could affect existing woodland features of the SAC/SSSI. Our concerns have been reflected recorded in detail in Annex H of the AGVMP and in the draft SoCG.</p> <p>In response to this advice, the applicant has developed an alternative package of whitebeam planting to be delivered on FC land, which we consider would meet legal and ecological requirements for compensatory measures, assuming that can be secured through agreement with FC.</p>
BIO.1.18	<p>Natural England considers that Whitebeam planting should be a prominent component of the package of compensation measures, given the rarity of the species.</p> <p>We do recognise the difficulties encountered in propagating Avon Whitebeam in particular, but it is evident the applicant is exhausting all possibilities to maximise the number of these species planted as part of the compensation. Given this we are satisfied that the compensation package will be as optimal as it can be in terms of species of Whitebeam used but would welcome continued efforts to propagate further specimens.</p>
BIO.1.25	<p>The applicant has discussed the outputs of further survey data on bat use at Pill station with Natural England. We agreed with the applicant that the additional information gathered enabled the previous assumption that bat use of the station may be linked to the North Somerset and Mendip Bats SAC to be discounted. While this means that measures to protect bats at Pill Station are not therefore deemed to be a requirement of HRA, those measures are still necessary to protect bats from effects of artificial lighting and will need to be secured.</p>
BIO.1.28	<p>It is Natural England's understanding the impacts on bats from the introduction of artificial lighting would only arise at Pill station. As the disused railway line, the key feature associated with the Bats SAC, already provides a functional route for commuting and foraging bats we would not expect any changes with the introduction of the project. Additional planting proposed along that section of the scheme provides further confidence that the dark corridor is maintained, though it would be useful for the applicant to clarify whether any temporary impacts may arise where vegetation that must be removed would allow artificial light from existing sources to increase lux levels on parts of the corridor.</p>
BIO.1.30	<p>The DLL gives at least the same level of certainty, if not more, at the DCO stage that measures can be secured. In supporting the implementation of DLL in North Somerset and many other districts in England, Natural England has undertaken extensive evidence-gathering and assessment of the scheme against relevant legislation and policy requirements. Each district scheme is subject to a Favourable Conservation Status as is each application under DLL.</p> <p>Funding for agreed compensation measures is secured through payment to Natural England, who then ensure that the identified 'habitat delivery body' is paid to have a sufficient supply ponds in appropriate locations.</p>

BIO.1.32	As the applicant has elected to use the DLL route to address impacts on great crested newts, a provisional Impact Assessment Conservation Payment Certificate (IACPC) will be issued instead of a LoNI.
BIO.1.39	While legal opinions can include subtle variations in interpretation we are broadly in agreement with the legal opinion submitted by the applicant. Our views, particularly in relation to the consideration of compensation measures are set out in the Written Representations and responses to other questions above.
BIO.1.40	Natural England considers the zones used to be appropriate and sufficiently precautionary for the purposes of HRA and taking account of the nature of the project. Whilst we do use some distance criteria on Impact Risk Zones relating to European sites on MAGIC map we encourage project promoters to use that as a starting point for considering for considering risks for their particular project.
BIO.1.41	Natural England can confirm that we are satisfied that the HRA has identified all potential impact pathways for European sites and their qualifying features.
BIO.1.42	We do not have concerns regarding decommissioning in relation to HRA, but it may be useful for the applicant to provide further clarification. The railway line through the Avon Gorge Woodland SAC is an existing freight line and ceasing a passenger service in the future and so it is difficult to envisage any impact pathway that would result and meaningful assessment may not be possible at this stage. Similarly, ceasing the passenger service along the section of line connected to the Bats SAC would appear unlikely to affect bats.
DCO.1.25	We believe this is a matter that the applicant intends to clarify, and applies to wider works outside of protected areas.
DCO.1.45	The applicant has explained to NE that in 10 years vegetation growth will be such that it will negate the need for other measures to restrict effects of artificial lighting. This appears to be reasonable.