Date: 14 December 2021
My ref: MetroWest Phase 1
Your ref:
Contact: James Willcock
Telephone: [redacted]
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North Somerset COUNCIL

Mark Lillie/Eszter Lakos
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Dear Mark / Eszter

Development Consent Order application for Portishead Branch Line – MetroWest Phase 1
Application Reference: TR040011

I write in response to your letter of 8th December 21 to the DfT.

The Ashton Vale Road ramp (formally work No 27) was deleted from the scheme during the DCO examination. The draft Order makes no reference to Ashton Vale Road ramp, consequently neither NSC, WECA nor NR will have powers from the Order for delivery of a ramp at Ashton Vale Road.

The document you have referred to in your letter is the Schedule of Mitigation which states:
"Design of shallow gradient ramps for ~~the Trinity School Bridge,~~ Pill station, and (if used) the Pedestrian and Cycle Ramp between Ashton Vale Road and Ashton Road."

Please take this letter as formal confirmation that the ramp at Ashton Vale Road has been deleted from the draft Order, the scheme is no longer pursuing the delivery of the ramp and no powers for the delivery of the ramp will be included in the Order, (in anticipation of the Order being made by the Secretary of State shortly).

Yours sincerely

[redacted]

James Willcock
MetroWest Phase 1 Programme Manager

Development Consent Order application for Portishead Branch Line – MetroWest Phase 1
Application Reference: TR040011
Response to DfT letter of 28th January 2022

1. The removal of whitebeam trees

The Secretary of State considers that adverse effects on the integrity of the Avon Gorge Woodlands Special Area of Conservation and the whitebeam trees associated with the Tilio-Acerion woodland, a priority habitat as defined in regulation 3 of the Conservation of Habitats and Species Regulations 2017 (as amended ('the Habitats Regulations') cannot be excluded. In accordance with regulation 64(2)(b) of the Habitats Regulations, the Secretary of State for Transport requested an opinion from the Secretary of State for Environment Food and Rural Affairs, as the appropriate authority under these Regulations, on whether the Development must be carried out for reasons of over-riding public interest, other than those relating to human health, public safety or beneficial consequences of primary importance to the environment.

As part of the consideration to be given by the Secretary of State for Environment Food and Rural Affairs, additional information in relation to the removal of whitebeam trees is requested from the Applicant.

a. Given the diminutive size of the whitebeam trees that may need to be removed, please could the Applicant provide details on why each of the trees indicated in table 8.4 of the Applicant's Habitat Regulation Assessment would need to be removed prior to development rather than left to grow and removed or coppiced at a later date.

b. The Applicant is asked to provide details on the exact threat to the railway line or to safety that each of the whitebeam trees identified for removal poses in their current form and position.

c. For each of the whitebeam trees impacted, the Applicant is asked to provide the Secretary of State for Transport with the regulations and/or legislation that is guiding the identification of these trees as a threat to the railway line. Further, the Applicant is asked to confirm whether there are previous circumstances where the regulations and/or legislation have been used, and if so, the Applicant is asked to provide details of those circumstances.

Applicant's Response

Introduction

The information provided about the Portishead Branch Line (MetroWest Phase 1) Development Consent Order Scheme (the DCO Scheme) by the Applicant in the processes of both Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA) assumes a realistic worst case scenario. The whitebeams potentially affected by the Proposed Scheme all lie within both the Avon Gorge Woodlands Special Area of Conservation (SAC) and the Avon Gorge Site of Special Scientific interest (SSSI). In both the Environmental Statement and the Report to Inform HRA for the DCO Scheme the Applicant has identified the realistic worse case for individual whitebeam trees. In some cases this comprises removal and in other cases it comprises coppicing. This approach does not commit the Applicant to the assessed course of action; instead, it is intended to provide stakeholders and decision-makers with confidence that the grant of consent would not give rise to harm greater than that assessed.

The list of Consents and Licences required under Other Legislation submitted to the Examination (Examination Library document reference: REP7-067) identifies at entry no. 3 the need for a consent/assent under the Wildlife and Countryside Act 1981 to give prior approval for potentially damaging operations in the SSSI. This is also referred to in the Avon Gorge Vegetation Management Plan (AGVMP) at Section 1.4 Legislative Context and in the Statement of Common Ground between

the Applicant and Natural England at item 7.1.1 (Examination Library Document Reference REP6-146). As Network Rail is a statutory undertaker, the prior approval of potentially damaging operations within the SSSI to be given by Natural England will take the form of an assent under section 28H of the Wildlife and Countryside Act 1981. The Statement of Common Ground confirms that the proposed mitigation measures for effects on the SSSI have been agreed and refers to relevant documents. The AGVMP sets out the details of rare whitebeam mitigation at Annex H.

Although the rare whitebeam mitigation measures have been agreed with Natural England, this does not remove the requirement for Network Rail to obtain an assent from Natural England before undertaking potentially damaging operations in the Avon Gorge SSSI. The list of potentially damaging operations includes "*Tree and/or woodland management. The introduction of tree and/or woodland management and changes in tree and/or woodland management including afforestation, planting, clear and selective felling, thinning, coppicing, modification of the stand or underwood, changes in species composition, cessation of management*." It is expected that assent would be given by Natural England subject to the mitigation measures already agreed. A further measure, comprising a joint inspection of the works areas potentially affecting the 19 identified Whitebeams in order identify any further actions to avoid or reduce effects on individual Whitebeams is proposed in this response. Natural England can include this as a risk avoidance measure in the assent under the Wildlife and Countryside Act 1981. This is a matter that would be secured separately from the DCO process, through the Wildlife and Countryside Act 1981, section 28H assent process.

a. Given the diminutive size of the whitebeam trees that may need to be removed, please could the Applicant provide details on why each of the trees indicated in table 8.4 of the Applicant's Habitat Regulation Assessment would need to be removed prior to development rather than left to grow and removed or coppiced at a later date.

The removal or coppicing of Whitebeams has been identified, as listed in Figure 1 below, where:

- the locations of Whitebeams potentially conflicts with proposed rock bolts and catch fences (affected trees shown in red boxes below); or
- bridge strengthening works are proposed (affected tree shown in green box below); or
- trees are growing directly out of the tunnel portals and are therefore considered a safety concern (affected trees shown in blue boxes below).

Table 8.4: Removal/coppice of rare whitebeam trees for DCO Scheme

Species and number	Reference number (Appendix 9.11, Annex F, Figure 1)	Location	Removal or coppice	Description of tree (Houston 2017)	Reason for removal
1 Avon whitebeam	AV04	Clifton Bridge Tunnel 1 portal	Remove and stumps treated with herbicide	Coppiced, height 4m, girth 7cm, 4 stems	Dangerously overhanging
1 Avon whitebeam	AV03	Clifton Bridge Tunnel 1 portal	Remove and stumps treated with herbicide	Coppiced, height 4.5m, 3 stems	Dangerously overhanging
1 Avon whitebeam	AV05	Clifton Bridge Tunnel 1 portal	Remove and stumps treated with herbicide	Coppiced, height 6m, girth 20cm, 2 stems	Dangerously overhanging
1 Avon whitebeam	AV07	Clifton Bridge Tunnel 1 portal	Coppice	Coppiced, height 2.5m, multi-stem	Overhanging rock face
1 Avon whitebeam	AV022	Clifton Bridge Tunnel 1 portal	Coppice	Maiden, height 11m, girth 38cm	Overhanging rock face
1 Avon whitebeam	Predicted	NR rock face ID03	Remove	Unknown	Predicted for installation of rock bolts
1 Avon whitebeam	Predicted	NR rock face ID04	Remove	Unknown	Predicted for installation of rock bolts
4 Avon whitebeam	Predicted	Third party rock face 2	Remove	Unknown	Predicted for installation of rock catch fence
1 Avon whitebeam	Predicted		Remove	Unknown	Contingency
1 Round-leaved whitebeam	EMI10	Clifton Bridge Tunnel 2 eastern portal	Remove and stumps treated with herbicide	Coppiced, height 3m, 2 stem	Dangerously overhanging
1 Round-leaved whitebeam	EMI182	Bridge No. 6	Remove	Coppiced, height 2m, girth 3.5cm, 2 stems	To enable bridge works

Table 8.4: Removal/coppice of rare whitebeam trees for DCO Scheme

Species and number	Reference number (Appendix 9.11, Annex F, Figure 1)	Location	Removal or coppice	Description of tree (Houston 2017)	Reason for removal
				from 15cm stump. Long known tree	
1 Round-leaved whitebeam	EMI08	Near Valley Bridge	Coppice	Coppiced, height 0.32m, 4 stems	For installation of new fencing
1 Round-leaved whitebeam	Predicted	NR rock face ID05	Remove	Unknown	Predicted for installation of rock bolts
1 Round-leaved whitebeam	Predicted		Remove	Unknown	Contingency
1 Bristol whitebeam	BRI08	Clifton Bridge Tunnel 2 portal	Coppice	Maiden, height 4m, girth 27cm, long known stunted	Overhanging rock face
1 Bristol whitebeam	Predicted		Remove	Unknown	Contingency
5 Leigh Woods whitebeam	Predicted	NR rock face ID09	Remove	Unknown	Predicted for installation of rock bolts
1 Leigh Woods whitebeam	Predicted		Remove	Unknown	Contingency
1 Willmot's whitebeam	Predicted	NR rock face ID07	Remove	Unknown	Predicted for installation of rock bolts
1 Grey-leaved whitebeam	Predicted		Remove	Unknown	Contingency

Figure 1 - Extract of Table 8.4 of the Applicant's Habitat Regulation Assessment

The 19 Whitebeams shown in the red boxes in Figure 1 above were assumed to clash with the proposed rock bolt and catch fence permanent works. The assessment undertaken in the Avon Gorge Vegetation Management Plan calculated the overall number of impacted Whitebeams based on a percentage of the rock face impacted by the construction works (extract in Figure 2 below for completeness). This assessment was a reasonable worse case assessment which assumed any clashes would require the Whitebeams to be removed prior to development to enable construction.

Ecological assessment of construction works to Third Party Rock Faces within Avon Gorge Woodlands SAC

Assessment based on construction works detailed in AmeyConsulting report (2018)

Reasonable worst case scenario developed in consultation with NR and NSDC used to determine the predict impact on the SAC and rare plants:

- No rare or notable plants need to be removed for vegetation clearance for geo-technical inspection.
- Each rock bolt will require 4 m^2 of vegetation removal for installation.
- No rare/notable plants will be removed or affected from removing loose blocks, rock scaling or individual trees causing root-jacking. If there is potential for plants to be damaged by material falling onto them from above, they will be protected, and this will be developed during the detailed design. Tree species causing root jacking have not been confirmed at this stage but will be confirmed at the detailed design stage.
- Light scaling will entail hand picking loose rocks using hand tools and can avoid rare or notable plants and is already carried out in the Avon Gorge in consultation with Natural England.
- The impact on rare whitebeam trees is predicted by calculating the percentage of the rock face area impacted by the construction works. This percentage was then used to calculate the predicted number of whitebeam trees to be removed. This assumes that whitebeams and rock bolts are distributed evenly across the rock face. This is unlikely to be the case, but locations of rock bolts cannot be determined until the detailed design stage.
- Two access routes and a site compound are proposed on FC land for construction works access (Compounds, Haul Roads, and Access to Works Plans, DCO Document Reference 2.29). Materials will be taken to the rock face areas by a 4 x 4 vehicle and a trailer. No vegetation clearance or works to upgrade the existing site compound area or access tracks are required for construction works access.

Figure 2 - Extract of Avon Gorge Vegetation Management Plan – Annex E, page E1

Rock bolt and catch fence locations are relatively flexible and so far as possible the detailed design would be done in a way to reduce / eliminate the number of whitebeams affected. Therefore, the overall number of Whitebeams to be removed / coppiced to enable rock bolts and catch fences to be positioned may be reduced. There is a degree of flexibility in the actual positioning of rock bolts and catch fences when the works are being undertaken on-site, which could enable avoidance of rare Whitebeams and other rare species, while retaining an optimum position for their effectiveness. By relocating the rock bolts slightly and adjusting the alignment of the rock catch fences, it is likely the disturbance to some of these Whitebeams can be avoided, in which case the total number of losses of these Whitebeams could be lower than the 19 trees identified in the assessment as being at risk. For further detail on approach taken to the assessed impacts on Whitebeams refer to Annex D, E & F of the Avon Gorge Vegetation Management Plan) (Examination Library Document Reference REP6-146).

The 1 Whitebeam shown in the green box in Figure 1 is growing at the existing Underbridge 6. The works to Underbridge 6 are no longer required and therefore this Whitebeam will be unaffected by the scheme.

The 7 Whitebeams shown in the blue boxes in Figure 1 (5 Avon Whitebeams, 1 Round leaved Whitebeam and 1 Bristol Whitebeam) in Figure 1 have been specifically identified for removal / coppicing as they are growing directly out of the tunnel portals. While diminutive in size, as these trees grow they cause damage and rock jacking. Over time, this causes weakening of the masonry or rock cutting, resulting in spalling and rock fall. In the case of the tunnel portals, this would fall directly onto the railway line, which is a significant safety issue. This can often happen with little warning, especially from storm events where wind will cause the tree to move, exerting forces at the point where the root is embedded within the weaker rock / masonry. Consequently, it will be necessary remove or coppice these Whitebeams prior to the start of the passenger train services.

b. The Applicant is asked to provide details on the exact threat to the railway line or to safety that each of the whitebeam trees identified for removal poses in their current form and position.

The 18 Whitebeams shown in the red boxes in Figure 1 (which includes 7 of the rare Avon Whitebeam) proposed to be removed / coppiced due to clashes with the permanent works do not result in any exact threat to the railway line or safety as they would only be removed if there were clashes with construction works. As set above, the assessment undertaken within the AGVMP was undertaken on a reasonable worse-case scenario basis. By relocating the rock bolts slightly and adjusting the alignment of the rock catch fences it is likely the disturbance to some of these Whitebeams can be avoided in which case the total number of losses of these Whitebeams could be lower than the 18 trees identified in the assessment as being potentially affected on a worse-case basis.

When the request for assent under the Wildlife and Countryside Act 1981, section 28H is made, the risks to Whitebeam trees will be identified in more detail and a description provided as to how it is proposed to achieve the appropriate balance between railway safety and retention of the Whitebeam trees. In addition to the mitigation measures already agreed, it is proposed to request a joint inspection of relevant work sites by the Applicant, the West of England Combined Authority, Network Rail and Natural England during the detailed design and construction phases. This is proposed with the aim of jointly agreeing actions to avoid impacts to these 18 Whitebeams (with a particular focus on the 7 Avon Whitebeams), while maintaining the integrity of the safety of the railway in respect of remedial works that need to be undertaken to address the geo-technical faults and rock fall threats arising to the railway, with the operation of both passenger trains and freight trains. This is a matter that would be secured separately from the DCO process, through the Wildlife and Countryside Act 1981.

The 7 Whitebeams growing out of the tunnel portals (which includes 5 Avon Whitebeams, 1 Round leaved Whitebeam and 1 Bristol Whitebeam - see blue boxed trees in Figure 1) are positioned directly above the railway line and threaten to cause spalling masonry and rock material to fall directly onto the tracks. Trains could potentially strike this fallen debris, causing damage or derailment and resultant safety concerns. While this threat exists today, the severity of an incident in the future is increased with the introduction of passenger services and increase in frequency of trains running on the line. Lighter passenger stock may also be more susceptible to derailment than the occasional heavier freight trains using the line currently. Removal of this threat prior to the start of passenger train service significantly reduces the likelihood of an incident like this happening. Figure 3 on the next page provides context on how the Whitebeams (shown with orange tags on them) are growing into the rock fissures, and how sections of rock material could break away directly onto the track if the trees were left to grow.

The 7 Whitebeams growing out of the tunnel portals (which includes 5 Avon Whitebeams, 1 Round leaved Whitebeam and 1 Bristol Whitebeam) will be replaced on a 2 for 1 basis, as set out in the Avon Gorge Vegetation Management Plan. The Applicant has successfully propagated and grown 11 Avon Whitebeams to date. The Applicant therefore has sufficient propagated Avon Whitebeams to replace the 5 to be removed / coppiced and will continue to collect Whitebeam fruit each autumn for propagation to grow more Avon Whitebeams to replace any other unavoidable losses of Avon Whitebeams. The Applicant has successfully propagated over 200 Whitebeam trees in total which includes ample Round leaved Whitebeams and Bristol Whitebeams. If there are not enough of a relevant whitebeam species either at initial planting or at any time during the monitoring period for replacement to meet the desired ratio of two trees planted for each tree lost then the AGVMP paragraph 5.7.3 sets out the process for securing alternative options with the agreement of Natural England.

Figure 3 - Whitebeams over tunnel portal

c. For each of the whitebeam trees impacted, the Applicant is asked to provide the Secretary of State for Transport with the regulations and/or legislation that is guiding the identification of these trees as a threat to the railway line. Further, the Applicant is asked to confirm whether there are previous circumstances where the regulations and/or legislation have been used, and if so, the Applicant is asked to provide details of those circumstances

Network Rail is obligated to provide a duty of care to the safety of railway employees under the Health and Safety at Work Act 1974 as well as to railway users under the Railways and Other Guided Transport Systems (Safety) Regulations 2006.

For the 19 Whitebeams identified for removal / coppicing due to clashes with the permanent works, this is not applicable as they do not pose a threat to the railway.

For the 7 Whitebeams identified for removal / coppicing that are located on the tunnel portal, the decision would have been guided at the time by Network Rail standard NR/L2/TRK/5201 - Management of Lineside Vegetation (Issue 4). This has since been superseded by Network Rail standard NR/L2/OTK/5201 - Lineside Vegetation Management Manual (Issue 5) which provides the additional requirements for collecting data to establish the level of tree risk, to assign interventions and to understand the impact of intervention so that informed decisions can be made for tree management.

It should be noted that since the initial assessment was undertaken (Figure 1) an independent review was undertaken, called 'Valuing Nature – A Railway for People and Wildlife - The Network Rail Vegetation Management Review'. In its own words, the review sought to answer the question "can Network Rail, through the way it manages lineside vegetation, ensure the safety and performance of the railway while improving the natural capital that it owns on behalf of the nation". This review makes good reference to the environmental and safety legislation that Network Rail must follow, which is shown in the extract in Figure 4

Literature review

Network Rail has a wide range of internal guidance and policy documents covering aspects of vegetation management. There is also extensive literature concerned with the ecological and arboricultural aspects of lineside vegetation management, including legislative requirements, government policy, standards and guidance. A full literature review is included in the appendices to this Review, which are published as a separate document. The key facts are outlined below.

Relevant legislation

The relevant environmental legislation includes the Wildlife and Countryside Act 1981, and the Conservation of Habitats and Species Regulations 2017. Under the 1981 Act it is an offence to intentionally or recklessly cause harm to any species that is protected, including by harming its habitat, and the 2017 regulations gives similar protection to wild animals. The Natural Environment and Rural Communities Act 2006 also places a duty on public authorities, including Network Rail, to conserve biodiversity.

> *Duty to conserve biodiversity – Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.* [6]

More recently, the European Union (Withdrawal) Act 2018 (section 16) makes clear that environmental considerations of the precautionary principle and prevention of environmental damage (among others) will be maintained in UK legislation, once the UK leaves the European Union.

The duties to protect the environment mentioned above sit alongside a separate set of duties relating to health and safety. The Health and Safety at Work Act 1974 (HSWA) creates a number of statutory duties to ensure that employers conduct their undertakings in such a way as to protect the health, safety and welfare of their employees (section 2), or anyone not in their employment who may be affected thereby (section 3). In the case of Network Rail, these duties will include the management of the lineside estate and associated vegetation in order to ensure passenger and employee safety of those using the rail network. It is clear that some tree felling and control of vegetation is necessary to protect the safety of both Network Rail's employees and the public and that such action can reasonably be said to be required in order to comply with the statutory duties imposed on Network Rail under sections 2 and 3 HSWA. Further, the Wildlife and Countryside Act 1981 provides defences against the offences in relation to the harming of wild birds in section 1 of that Act where a person's action was necessary for the purpose of preserving public safety and where the harm was the incidental result of a lawful operation and could not reasonably have been avoided.

Network Rail's approach to lineside vegetation management must therefore be designed to ensure compliance with both its environmental and health and safety duties.

[6] *Natural Environment and Rural Communities Act, 2006*

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Figure 4 - Extract of The Network Rail Vegetation Management Review

It was this review that prompted the standards change stated above, which changed the way the vegetation risk was assessed. The assessment in Table 8.4 of the Applicant's Habitat Regulation Assessment (Figure 1 above) was undertaken while the older standards were in place, where any vegetation within 3m of the railway (with no vertical limit) would fall within the red zone (Figure 5). The new standards involve using 45 degree angle for establishing the 'Immediate Action' zone as shown within Figure 6.

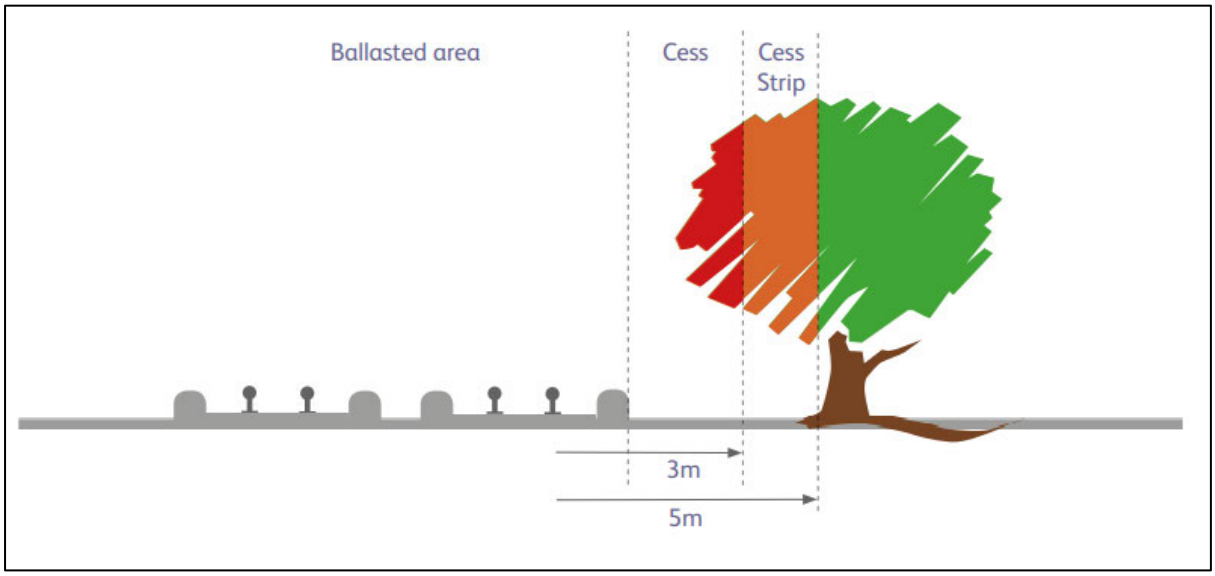

Figure 5 - Vegetation risk assessment in old standard NR/L2/TRK/5201

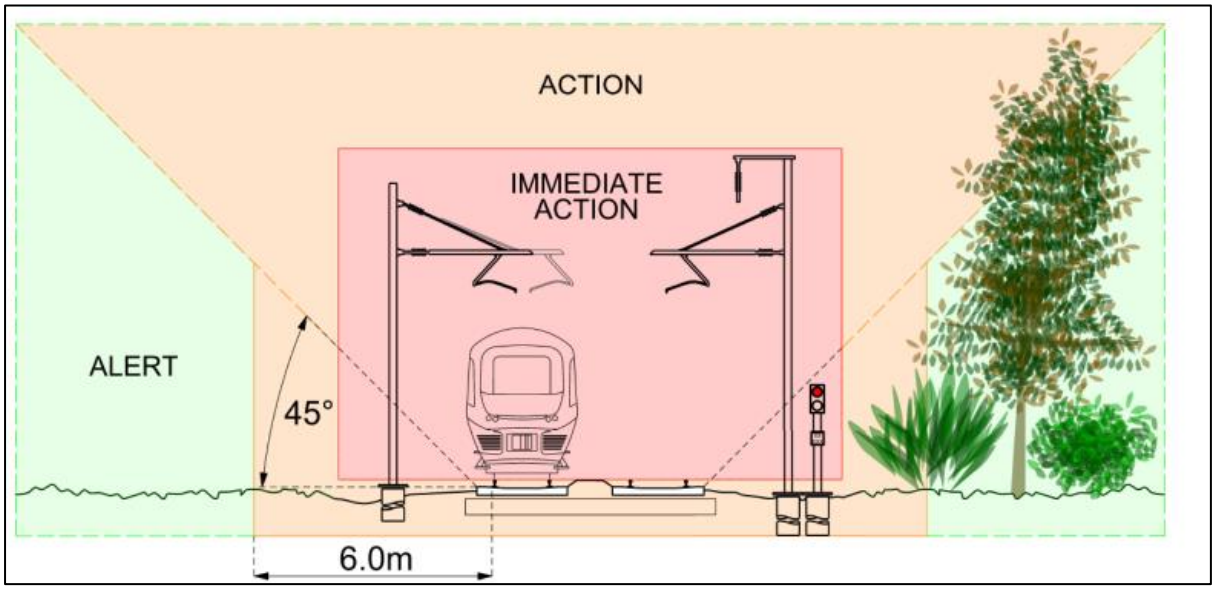

Figure 6 - Vegetation risk assessment in new standard NR/L2/OTK/5201

However, the new guidance does not change the assessment in relation to the 7 Whitebeams identified for removal / coppicing that are located on tunnel portals. This is because these 7 Whitebeams pose a threat to the railway and under the Health & Safety Act 1974, Network Rail has legal responsibilities to protect the safety of its employees, rail industry employees (e.g. train crew) and the general public (eg passengers on board trains). As set out in response to question b) above, the severity of an incident in the future is increased with the introduction of passenger services and increase in frequency of trains running on the line. Lighter passenger stock

may also be more susceptible to derailment than the occasional heavier freight trains using the line currently. Removal of this threat prior to the start of passenger train services significantly reduces the likelihood of an incident like this happening, enabling Network Rail to fulfil its legal responsibilities under the Health & Safety Act 1974.

Date: 9 February 2022
My ref: MetroWest Phase 1
Your ref:
Contact: James Willcock
Telephone: [redacted]
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Mr O'Hanlon
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Dear Mr O'Hanlon

Applicant: North Somerset District Council
Development Consent Order application for Portishead Branch Line – MetroWest Phase 1
Application Reference: TR040011

I write in response to your letter of 28 January 2022.

1. The removal of Whitebeam trees
Our response to the questions concerning the removal of Whitebeam trees is set out in the attached document.

2. Babcock Integrated Technology Ltd ("Babcock")
In respect of the query regarding Babcock, our response is as follows:

The Applicant wrote to the Secretary of State on 20 December 2021 confirming that it had written to Babcock Integrated Technology Ltd (Babcock) to confirm Work No. 27 is no longer included within the works description. The Applicant attaches its letter of 14 December 2021 to Babcock. The Applicant has received no response since our latest submission. The Applicant believes there are no outstanding issues to be resolved with Babcock.

Work No 27 (the pedestrian and cycle ramp between Ashton Vale Road and Ashton Road) no longer forms part of the Applicant's scheme. The reference to Work 27 in the Schedule of Mitigation (Doc reference: REP7-021) reads:

Design of shallow gradient ramps for the Trinity School Bridge, Pill station, and (if used) the Pedestrian and Cycle Ramp between Ashton Vale Road and Ashton Road.".

It was not felt that the wording in the Schedule of Mitigation required amendment relating to Work No. 27 because the Work has been removed from the draft Development Consent Order and the Schedule of Mitigation includes the words "if used". Work 27 will not now be authorised and will not be part of the scheme if development consent is granted. The remaining reference in the Schedule of Mitigation does not provide authorisation for Work No. 27 to proceed.

Please confirm receipt of this letter and enclosures.

Yours sincerely

[redacted]

James Willcock
MetroWest Phase 1 Programme Manager

Enclosures:

1. Response on the removal of Whitebeam trees
2. Letter of 14 December 2021 to Babcock