



# MetroWest+

## Portishead Branch Line (MetroWest Phase 1)

Planning Inspectorate Reference: TR040011

Applicant: North Somerset District Council

9.3.17 ExA.SoCG-NT.D7.V1 – Statement of Common Ground

Between:

- (1) North Somerset District Council;
- (2) Network Rail Infrastructure Limited; and
- (3) National Trust

Author: Womble Bond Dickinson (UK) LLP

Version: 1

Date: April 2021



## ABBREVIATIONS

|           |                                     |
|-----------|-------------------------------------|
| 2008 Act  | Planning Act 2008                   |
| Applicant | North Somerset District Council     |
| DCO       | Development Consent Order           |
| ES        | Environmental Statement             |
| NRIL      | Network Rail Infrastructure Limited |
| NT        | National Trust                      |
| PINS      | Planning Inspectorate               |
| SoCG      | Statement of Common Ground          |

In the text, "Document Reference" refers to the DCO document reference number as shown on the documents on the Portishead Branch Line (MetroWest Phase 1) [project page on the PINS website](#).

In cases where a document appears twice and there are two Document Reference numbers, (for example, the AGVMP which appears twice as standalone Document Reference number 8.12 and as ES Appendix 9.11, Document Reference 6.25), we have used the Document Reference number for the standalone document.

## **INTRODUCTION**

- 2.1 This Statement of Common Ground ("SoCG") has been prepared by North Somerset District Council ("the Applicant"), Network Rail Infrastructure Limited ("NRIL"), and National Trust to set out the areas of agreement and disagreement between the parties in relation to the Development Consent Order ("DCO") application for the Portishead Branch Line (MetroWest Phase 1) ("the DCO Scheme") based on consultation to date.
- 2.2 This SoCG comprises an agreement log which has been structured to reflect topics of interest to National Trust in relation to the application for the DCO Scheme. Topic specific matters agreed and not agreed between National Trust, NRIL and the Applicant are included.
- 2.3 The letter contained in Appendix 1 sets out an offer which was made to National Trust by the Applicant and NRIL in relation to the carrying out of a risk assessment to determine the appropriateness of installing the catch fences on either National Trust land or Network Rail land, following discussions between the parties. The offer, which is to be followed by a detailed agreement, has been accepted by National Trust subject to the completion of the detailed agreement.

## **SCHEME OVERVIEW**

- 3.1 The Applicant has applied to the Planning Inspectorate ("PINS") for a DCO to construct the Portishead Branch Line under the Planning Act 2008 ("Application"). The Application was made on 15 November 2019 under reference TR040011 and was accepted for examination on 12 December 2019.
- 3.2 The DCO Scheme will provide an hourly (or hourly plus) railway service between Portishead and Bristol Temple Meads Railway Station, with stops at Portishead, Pill, Parson Street and Bedminster.
- 3.3 The Application has been accompanied by an Environmental Statement ("ES") because the DCO Scheme is classified as EIA development in the EIA Regulations 2017.

## **MATTERS OF INTEREST TO NATIONAL TRUST IN THE DCO SCHEME**

- 4.1 National Trust is the custodian of several historic properties in North Somerset and Bristol, including Leigh Woods, which is adjacent to the DCO Scheme.

## **OVERVIEW OF ENGAGEMENT**

### **5.1 Introduction**

- 5.1.1 This section briefly summarises the consultation that the Applicant and NRIL have had with National Trust. For further information on the consultation process please refer to the Consultation Report (Document Number 5.1).

### **5.2 Post-application**

- 5.2.1 Following the submission of the Application on 15 November 2019, the parties have continued to engage and have progressed the substantive matters that are recorded in this document.

- 5.2.2 National Trust submitted a Relevant Representation to the Planning Inspectorate.

### **5.3 Overview of key issues raised in the Relevant Representation and at Section 42 consultation**

- 5.3.1 In its Relevant Representation, following publication of the acceptance of the Application pursuant to Section 56 of the 2008 Act, National Trust broadly supports the upgrading of the railway line subject to the following comments:

- (i) Ongoing liability for managing rock fences is significant and works should be placed on NRIL land as much as possible.
- (ii) The proposed works will have an environmental effect on the flora and fauna that is endemic to the Avon Gorge. National Trust confirmed that it was pleased to see mitigation works included and that whilst there are large losses of habitat on National Trust land, proportional to the scheme, the total area in the SAC is small.
- (iii) Within the compound area on National Trust land there are Leigh Woods Whitebeams, unimproved calcareous grassland, Gloucester hawkweed, and fingered sedge, Bristol rockcress close to the location of where materials will be stored. The National Trust expect the compound area within this location to be as small as possible and that loss of species caused by the ramp and these works

are mitigated for. National Trust would expect a survey of this specific area prior to works commencing and after works have finished to monitor ruderal species development and for non-native species. The National Trust do not expect these works to have a major impact on visitor business.

The following sections provide detail on the matters raised by National Trust during the course of the DCO Scheme consultation, the actions taken by the Applicant and NRIL in response, and whether the matter is agreed or remains to be agreed.

## POINTS AT ISSUE OR AGREED BETWEEN THE APPLICANT, NETWORK RAIL AND THE NATIONAL TRUST

This section sets out the topics that have arisen through consultation with National Trust and the current status of agreement in relation to each of these.

**Table 6.1**

| Ref. | Topic  | National Trust position  | Applicant/Network Rail position  | Status (Agreed/ Not Agreed) |
|------|--|--|--|-----------------------------|
| 6.1  | Progress to agreement between the National Trust, Network Rail and the Applicant | <p>The parties are seeking to deal with the following points by agreement:</p> <ul style="list-style-type: none"> <li>• The carrying out of a risk assessment to determine the appropriateness of installing the catch fences on either National Trust land or Network Rail land</li> <li>• Subject to the results of the risk assessment, the catch fences will either be: <ul style="list-style-type: none"> <li>○ installed on National Trust land with a payment to be made by the Applicant to National Trust for the future maintenance costs of the structures; or</li> <li>○ installed on Network Rail land with a payment to be made by the Applicant to Network Rail for the future</li> </ul> </li> </ul> | <p>The Applicant and Network Rail have settled a way forward for agreement following discussions with National Trust. A copy of the latest offer letter (redacted) from the Applicant is provided at Appendix 1.</p> | Agreed                      |

| Ref. | Topic   | National Trust position  | Applicant/Network Rail position   | Status (Agreed/ Not Agreed)  |
|------|---|--|---|--|
|      |   | <p style="text-align: center;">maintenance costs of the structures</p> <ul style="list-style-type: none"> <li>All parties reserve their position in relation to liability in the event of any rock falls or similar incidents</li> </ul>   |   |  |
| 6.2  | National Trust's existing liability for rock falls onto the existing railway line | <p>National Trust accepts that it may be liable for rock falls from the rock face of the Avon Gorge within its ownership, but each case would turn on its facts, in accordance with established case law on the measured duty of care.</p> <p>National Trust is concerned about any suggestion that the doctrine of the measured duty of care does not apply in or is to be disapplied or otherwise affected as a condition of any agreement between them and the Applicant and/or Network Rail.</p> | <p>National Trust has an existing and ongoing liability for any rock falls from the rock face within the Avon Gorge onto the existing railway, which is currently used for freight trains.</p> <p>The freight line was previously a passenger line between 1867 and 1964, and existed before National Trust took ownership of the land including the rock face.</p> <p>The National Trust's existing liability and duty of care to adjoining landowners (including Network Rail) arises as a result of established case law.</p> <p>However, the Applicant and Network Rail agree with the National Trust that National Trust and Network Rail will</p> | Network Rail and National Trust have agreed to each reserve their position on this issue |

| Ref. | Topic   | National Trust position  | Applicant/Network Rail position   | Status (Agreed/ Not Agreed) |
|------|---|--|---|-----------------------------|
|      |   |  | <p>each reserve its own position in relation to liability for any rock falls or similar incidents that actually occur, in case (for example) there is damage done by a rock fall or similar incident.</p>   |                             |
| 6.3  | <p>Risk assessment to determine if catch fences on Network Rail land could be installed</p> | <p>National Trust wants to ensure that there is an acceptable level of risk of rock falls, if the catch fences are installed on Network Rail land.</p> <p>As a result the National Trust wishes to see the results of a risk assessment that demonstrates the level of risk to National Trust by installing the catch fences on Network Rail land.</p> <p>The outcome of the risk assessment will determine where the catch fences should be installed, and who will be responsible for the ongoing maintenance.</p> <p>National Trust's position is that the question of whether the catch fences are of such effectiveness to protect against the Risk as to be satisfactory to the parties should be a matter for</p> | <p>The Applicant is willing to prepare, and share with the National Trust, an instruction to Network Rail to carry out a risk assessment.</p> <p>The Applicant and Network Rail agree that the risk assessment will determine whether the catch fences are installed on Network Rail land or National Trust land.</p> | Agreed                      |



| Ref. | Topic                        | National Trust position  | Applicant/Network Rail position   | Status (Agreed/ Not Agreed) |
|------|------------------------------|--|---|-----------------------------|
|      |                              | <p>agreement between the parties, failing which there would be a dispute resolution procedure.</p> <p>National Trust welcomes that the Applicant is willing to share with the National Trust the instruction to Network Rail to carry out a risk assessment, and wishes to ensure that the Applicant will have regard to any reasonable comments made by National Trust on the instruction before the final version is issued.</p>   |   |                             |
| 6.4  | Installation of catch fences | <p>If catch fences are to be installed on its land then National Trust should not have responsibility for the ongoing maintenance of these fences.</p> <p>However if the risk assessment determines that it would not be safe, to an acceptable level, to install the catch fences on Network Rail land, the National Trust would be willing to agree to this, provided that it received a payment from the Applicant to contribute towards the ongoing maintenance of the</p> | <p>Network Rail has agreed that, whilst it is not their preferred option, if required, the catch fences can be installed on Network Rail land (although some stays and wires may need to be anchored on National Trust Land if NT agrees to this option). Network Rail has agreed to take on the ongoing maintenance liabilities of the catch fences (where these are installed on Network Rail land). National Trust would not be responsible for the cost of installing the fences that will reduce its</p> | Agreed                      |

| Ref. | Topic   | National Trust position   | Applicant/Network Rail position  | Status (Agreed/ Not Agreed) |
|------|---|---|--|-----------------------------|
|      |   | <p>catch fences and the parties' position in relation to liability for rock falls was reserved. The National Trust would not be responsible for the installation costs of installing the catch fences on National Trust land.</p> <p>If the risk assessment shows that there is an acceptable level of risk from rock falls by installing the fences on Network Rail land, then National Trust would agree to the catch fences being installed on Network Rail land and being maintained by Network Rail.</p> | <p>potential liability for rock falls on the Network Rail land.</p> <p>The Applicant has agreed that, in any event, it will make a payment to either the National Trust or Network Rail for the ongoing maintenance of the catch fences. Whichever party receives the maintenance payment will depend on whose land the catch fences are to be installed on.</p>   |                             |
| 6.5  | Installation of geo-technical measures on National Trust land | National Trust is concerned about the liability on National Trust for rock falls onto the line with the restoration of passenger services. National Trust wishes to understand the detail of the proposed geo-technical measures on National Trust land and details of inspection, repair and renewal of the measures proposed.   | The proposed measures include the installation of geo-technical measures including catch fences, rock bolts and rock scaling. Rock bolts will be installed on land in the ownership of the National Trust, relying on temporary powers in the Order if the agreement of NT is not forthcoming. Network Rail has agreed to take on the inspection, repair and renewal of the rock bolts, if National Trust will agree to a continuing right of access for inspection, repair and renewal. | Agreed                      |

| Ref. | Topic  | National Trust position | Applicant/Network Rail position   | Status (Agreed/ Not Agreed) |
|------|--|-------------------------|---|-----------------------------|
|      |  |                         | National Trust would not be responsible for the cost of installing the rock bolts that will reduce its potential liability for rock falls on the Network Rail land.   |                             |
| 6.6  | The carrying out of rock scaling and de-vegetation works |                         | <p>Rock scaling will be carried out on the rock face in the ownership of both Network Rail and the National Trust (as well as other neighbouring land owners).</p> <p>Network Rail has agreed to be responsible for the carrying out of the rock scaling. National Trust would not be responsible for the cost of installing the fences that will reduce its potential liability for rock falls on the Network Rail land.</p> | Agreed                      |
| 6.7  | Inspections of the rock faces on National Trust land     |                         | <p>The Applicant and Network Rail have agreed that Network Rail will carry out annual inspections of the National Trust's rock faces.</p> <p>Network Rail would be willing to share the results of these inspections with the National Trust.</p>   | Agreed                      |


| Ref. | Topic                   | National Trust position | Applicant/Network Rail position   | Status (Agreed/ Not Agreed) |
|------|-------------------------|-------------------------|---|-----------------------------|
| 6.8  | Rock face inspections   |                         | <p>To enable Network Rail to prepare inspection reports and to carry out the inspections, the National Trust will in turn need to provide an easement (up to the maximum time period permissible within inalienability principles) to Network Rail to allow them to enter National Trust's land for inspection purposes and to the extent necessary, maintain, repair and renew the catch fences on Network Rail's land and the rock bolts on National Trust's land.</p>            | Agreed                      |
| 6.9  | Quarry Underbridge No 2 |                         | <p>It is now proposed that the height of Quarry Bridge No 2 is to be reduced by utilising a culvert sleeve infill solution which is subject to achieving GRIP 5 detailed design sign-off by Network Rail.</p> <p>As a result of the savings gained by the culvert sleeve infill solution, the maintenance contribution will be reallocated to either the National Trust or Network Rail (depending on which of them undertake this work) to fund the maintenance and subsequent</p> | Agreed                      |


| Ref. | Topic  | National Trust position  | Applicant/Network Rail position   | Status (Agreed/ Not Agreed) |
|------|--|--|---|-----------------------------|
|      |  |  | <p>renewal of the proposed catch fences at the end of their expected lifestyle.</p> <p>The changed nature of the works to Quarry Bridge 2 may only occur with NT's agreement, but will have the benefit of reducing the compound area required for the works to Quarry Bridge No 2.</p> |                             |
| 6.10 | Whitebeam planting   | Details of proposed whitebeam planting on National Trust land to be agreed       | <p>The Applicant will plant new Whitebeams on National Trust land as part of the ecological mitigation works for the DCO Scheme.</p> <p>The Applicant will seek to negotiate an access licence to National Trust's land in order to carry out the planting.</p>                         | Agreed                      |
| 6.11 | S130 Planning Act 2008 and Special Parliamentary Procedure ("SPP") | The question of whether SPP applies in relation to temporary powers is untested. | It is the Applicant's view that SPP does not apply in relation to the temporary use of land. With the protective provisions now included in the draft Order there is no question of compulsory acquisition of land occurring.   | Not agreed                  |

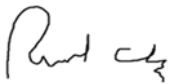
| Ref. | Topic                 | National Trust position | Applicant/Network Rail position  | Status<br>(Agreed/ Not Agreed) |
|------|-----------------------|-------------------------|--|--------------------------------|
| 6.12 | Protective Provisions |                         | Protective Provisions have now been agreed and included in the draft Order | Agreed                         |

## AGREEMENT ON THIS STATEMENT OF COMMON GROUND

This Statement of Common Ground has been jointly prepared and agreed by:

|   |
|---|
| <b>National Trust</b>   |
| Name: <i>Eleanor Baxendale MRICS</i>  |
| Signature:<br>                       |
| Position: <i>Estate Manager</i>   |
| On behalf of: <i>The National Trust for Places of Historic Interest or Natural Beauty (Registered Charity 205846)</i> |
| Date: <i>15/04/2021</i>   |

|   |
|---|
| <b>The Applicant</b>  |
| Name: <i>James Willcock</i>   |
| Signature:<br> |
| Position: <i>MetroWest Phase 1 Programme Manager</i>  |
| On behalf of: <i>North Somerset Council</i>   |
| Date: <i>15<sup>th</sup> April 2021</i>   |

|   |
|---|
| <b>Network Rail Infrastructure Limited</b>  |
| Name: <i>Richard Cole</i>   |
| Signature:<br> |
| Position: <i>Senior Sponsor</i>   |
| On behalf of: <i>Network Rail Infrastructure Limited</i>  |
| Date: <i>15<sup>th</sup> April 2021</i>   |

**APPENDIX 1**

**Letter from Applicant to National Trust 14 April 2021 (Redacted)**



**Date:** 14 April 2021  
**My ref:** MetroWest Phase 1  
**Your ref:**  
**Contact:** James Willcock  
**Telephone:** [REDACTED]  
**Email:** [REDACTED]



[REDACTED]  
Estates Manager  
National Trust  
Heelis  
Kemble Drive  
Swindon SN2 2NA

Place Directorate  
North Somerset Council  
Town Hall  
Weston-super-Mare  
BS23 1UJ

DX 8411 Weston-super-Mare

**Portishead Branch Line DCO Scheme (MetroWest Phase 1) - National Trust third (combined) offer**

Dear [REDACTED]

Thank you for your time on 1 and 13 April 2021, discussing the offers proposed by us, North Somerset District Council (NSC). We and Network Rail Infrastructure Limited (Network Rail) found the meetings very helpful and valuable. To summarise, there are two offers on the table - the offer made on 17 March 2021 (Offer 1) and the previous offer made on 11 February 2021 (as clarified further by an email from me on 12 February 2021) (Offer 2).

At the first meeting the National Trust indicated that, subject to detailed design and a satisfactory risk review, Offer 1 was preferred but, otherwise, Offer 2 could be progressed.

We are now writing to outline the new proposal made during the meetings.

We propose to proceed with revised Offer 1 as set out below subject to confirmation of a risk assessment that locating the catch fences on Network Rail land (Revised Offer 1) is as effective as locating the catch fences on National Trust land (Offer 2) at protecting the railway against rock falls from National Trust land, or if not as effective is nonetheless effective to the reasonable satisfaction of both parties.

The risk assessment will be conducted on the following basis:

- The Council will instruct Network Rail to carry out modelling to inform a risk assessment ("the Risk Assessment") to assess whether the Catch Fences (as defined below) are equally as effective or more effective than if they were placed on National Trust Land, to protect against the Risk (as defined below) or are of such effectiveness to protect against the Risk as to be satisfactory to both parties, acting reasonably (with dispute resolution provisions to be set out in the detailed agreement).
- Prior to giving the instruction referred to above, the Council will provide by email a copy of the draft instruction to National Trust and when informing the Risk Assessment, Network Rail shall have proper regard to any observations made by National Trust which are reasonable and are made within 14 days of receipt of the draft instruction (time being of the essence).

- The fences to be modelled by the Risk Assessment are as specified:

| Rockfall Barrier | Barrier Type | Height |
|------------------|--------------|--------|
| 1                | GBE-500A-R   | 2m     |
| 2                | GBE-500A-R   | 2m     |
| 3                | GBE-100A-R   | 2m     |

No further mitigation measures will be considered.

- The modelling will simulate the percentage of rock falls that overtop the barrier or exceed the designed impact energy of the fence, risking any onward trajectory towards the railway (“the Risk”).
- Network Rail agrees to act in good faith when carrying out the Risk Assessment.

If the Risk Assessment concludes that the Catch Fences would be equally as (or more) effective to protect against the Risk if they are placed on Network Rail land or if not as effective, are nonetheless effective to the reasonable satisfaction of both parties, then the parties will proceed with Revised Offer 1 as outlined below. If the Risk Assessment however concludes that the Catch Fences would be more effective from protecting against the Risk if they are placed on National Trust land, or if the detailed design shows that the Catch Fences cannot be placed on Network Rail land (because of physical constraints), the parties will proceed with Offer 2 as outlined below.

## **REVISED OFFER 1 – catch fences on Network Rail Land** (subject to detailed design)

### **1. Geo-technical Measures**

The Project will pay for and arrange for the installation of geo-technical measures on National Trust land including rock bolts and rock scaling.

### **2. Catch Fences**

In relation to catch fences and rock bolts, we now propose that:

- a) the catch fences will be installed on Network Rail land and that Network Rail will take on the ongoing maintenance obligation of the catch fences; and
- b) the rock bolts will continue to be installed on National Trust land but Network Rail will take on inspection, repair and renewal of the same.

### **3. Quarry Bridge No 2**

- a) The height clearance of Quarry Bridge No 2 is to be reduced by the delivery of the culvert sleeve infill solution which is subject to achieving GRIP 5 detailed design sign-off by Network Rail but will be substantially in accordance with Drawing No. W1097B-ACP-DRG-EST-022201 (Rev A02) a copy of which has been provided to the National Trust prior to the date hereof. The minimum clearance underneath the bridge will be 140cm in height and 170cm in width.

b) The maintenance contribution freed up by the infill solution is to be reallocated to Network Rail to fund maintenance, and subsequent renewal, of the proposed catch fences at the end of their expected lifecycle.

#### **4. Annual Inspections**

a) Network Rail will carry out annual inspections of National Trust's rock faces and is prepared to share these with National Trust. Network Rail is investigating whether the reports may be provided on the basis that a duty of care could be owed to National Trust by the organisation preparing the report, in which case National Trust would be able to rely on these reports.

b) To enable Network Rail to prepare such reports, National Trust will in turn provide an easement (up to the maximum time period permissible within inalienability principles) to Network Rail to allow them to enter National Trust's land for inspection purposes and, to the extent necessary, to maintain, repair and renew the catch fences on Network Rail's land and the rock bolts on National Trust's land.

c) Network Rail has agreed to take on the inspection, repair and renewal of the rock bolts installed by the Metrowest programme as part of the geo-technical works referred to above.

#### **5. Future Liability**

Both National Trust and Network Rail will reserve their position on contributions by each other as respects the carrying out of any further preventative measures that may be identified as necessary in the future or as respects liability in respect of nuisance, negligence or other causes of action relating to any rock fall or other incident.

#### **6. Temporary Rights and compensation**

a) NSC will make the following payments to National Trust (as set out in the current version of the HoTs):

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

b) National Trust will grant the necessary rights to NSC and/or Network Rail (as appropriate) for which the payments are noted above (as per HoTs).

c) National Trust will not make any claim for compensation under the national compensation code or any compensation of a like nature relating to the altering of the arch of Quarry Bridge No 2, save for the avoidance of doubt that this shall not exclude a claim by National Trust for compensation for personal injury, death or damage to property (other than damage to Quarry Bridge No.2).

## **7. Dormice**

National Trust will agree to the proposed dormouse boxes on its land (to support NSC's dormouse licence application) in the event that dormice are present and the boxes are needed. National Trust agrees that no additional payments are required by NSC in relation to dormice except for any physical measures such as dormice boxes.

## **8. Withdrawal of Objection**

On completion of a detailed formal agreement reflecting the terms of this offer, National Trust will:

- a) consent to the inclusion of the current powers proposed in the Order over NT's land;
- b) consent to the reduced height clearance under Quarry Bridge No 2;
- c) withdraw its objection to the DCO; and
- d) not make any further representations to the DCO Examining Authority without the agreement of NSC unless the representations are in response to a request of the Examining Authority.

## **REVISED OFFER 2 – Catch fences on National Trust land**

### **1. Geo-technical Measures**

- a) As with Revised Offer 1, the Project will pay for and will oversee the installation of geo-technical measures on National Trust land including rock catch fences, rock bolts and rock scaling (Works).
- b) Upon completion of the rock catch fences, Network Rail will use reasonable endeavours to assign any contractor warranties it has secured for the rock catch fences to the National Trust. If Network Rail is unable to do so NSC will cover the cost of any defects for one year after practical completion of the rock catch fences.

### **2. Catch fences**

- a) Unlike Revised Offer 1, all of these proposed Works will be located on National Trust land.
- b) Unlike Revised Offer 1, neither NSC nor Network Rail will be required to make further contributions to the certification, inspection, maintenance and renewal of the geo-technical measures on National Trust land installed by the Project.

[www.n-somerset.gov.uk](http://www.n-somerset.gov.uk)

Town Hall, Weston-super-Mare, BS23 1UJ

### **3. Quarry Bridge No 2**

As with Revised Offer 1:

a) The height of Quarry Bridge No2 is to be reduced by the delivery of the culvert sleeve infill solution which is subject to achieving GRIP 5 detailed design sign-off by Network Rail. NSC and/or Network Rail as appropriate will use reasonable endeavours to obtain such sign-off and any other consents or permissions required for the delivery of the solution.

Unlike Revised Offer 1:

b) The maintenance contribution freed up by the infill solution is to be allocated to National Trust to fund maintenance and subsequent renewal of the proposed catch fences at the end of their expected lifecycle. This will be paid to National Trust by NSC as a one off capital sum of [REDACTED] (inclusive of VAT (if any is payable)).

c) The trigger for the payment of the [REDACTED] will be the confirmation by NSC to National Trust of the award of contracts for the construction of the Project, following Full Business Case & Rail Network Enhancement Pipeline approval by the DfT, WECA and NSC; and

d) Upon NSC confirming the award of the contracts for the construction of the Project, the Council will make a single payment to National Trust within 60 days.

### **4. Annual Inspections**

a. As with Revised Offer 1, Network Rail will carry out annual inspections of National Trust's rock faces and is prepared to share these with National Trust. Network Rail is investigating whether the reports may be provided on the basis that a duty of care could be owed to National Trust by the organisation preparing the report, in which case National Trust would be able to rely on these reports.

b. As with Revised Offer 1, to enable Network Rail to prepare such reports, National Trust will in turn provide an easement (up to the maximum time period permissible within inalienability principles) to Network Rail to allow them to enter National Trust's land for inspection purposes and, to the extent necessary, to maintain, repair and renew the catch fences on Network Rail's land and the rock bolts on National Trust's land.

c. Network Rail has agreed to take on the inspection, repair and renewal of the rock bolts installed by the Metrowest programme as part of the geo-technical works referred to above.

### **5. Future Liability**

As with Revised Offer 1, both National Trust and Network Rail will reserve their position on contributions by each other as respects the carrying out of any further preventative measures that may be identified as necessary in the future or as respects liability in respect of nuisance, negligence or other causes of action relating to any rock fall or other incident.

## **6. Temporary Rights and compensation**

- a. Unlike Revised Offer 1, no additional payments for occupation, access rights and land use will be made to National Trust and the one off payment of [REDACTED] includes such payments.
- b. As with Revised Offer 1, National Trust will grant the necessary rights to NSC and/or Network Rail (as appropriate) noted in paragraph 6 (a) of Offer 1 (as per HoTs).
- c. National Trust will not make any claim for compensation under the national compensation code or any compensation of a like nature relating to for the altering of the arch of Quarry Bridge No 2, save for the avoidance of doubt that this shall not exclude a claim by National Trust for compensation for personal injury, death or damage to property (other than Quarry Bridge No.2).

## **7. Dormice**

As with Revised Offer 1, National Trust will agree to the proposed dormouse boxes on its land (to support NSC's dormouse licence application) in the event that dormice are present, and the boxes are needed. National Trust agrees no additional payments are required by NSC in relation to dormice except for any physical measures such as dormice boxes.

## **8. Withdrawal of objections**

On completion of a detailed formal agreement reflecting the terms of this offer, as with Revised Offer 1, National Trust will:

- a. consent to the inclusion of the current powers proposed in the Order over NT's land;
- b. consent to the reduced height clearance under Quarry Bridge No 2;
- c. withdraw its objection to the DCO; and
- d. not make any further representations to the DCO Examining Authority without the agreement of NSC unless the representations are in response to a request of the Examining Authority.

The parties recognise the possibility that the Risk Assessment will conclude that the effectiveness of the Catch Fences may be enhanced further (or may otherwise be satisfactory to the parties) if they were placed in part on National Trust land and in part on Network Rail land. However the parties recognise also that it would be difficult to deal properly with such a conclusion in the context of the mechanics of installing the Catch Fences and/or the payment provisions and/or the provisions of paragraph 1(b) of Revised Offer 2, in advance of the Risk Assessment being available; but if this is the conclusion of the Risk Assessment the parties (acting reasonably and in the spirit of the terms of this letter) will endeavour to agree such modifications to the proposed detailed agreement as shall be necessary to take account of the said conclusion.

This letter (redacting the financial sums) will be submitted to the Examination with a short statement of common ground by Deadline 7 (14 April 2021). In the meantime, we will work with you to formalise a tripartite agreement between National Trust, Network Rail and NSC with a view to agreeing this as soon as possible and in any event within the next three months.

As you are aware, NSC has already provided a fee undertaking to cover your reasonable legal fees (which applies to both options).

Yours sincerely



James Willcock  
MetroWest Phase 1 Programme Manager

This letter can be made available in large print, audio, easy read and other formats. Documents on our website can also be emailed to you as plain text files.

Help is also available for people who require council information in languages other than English. For more information contact the sender of this letter.

[www.n-somerset.gov.uk](http://www.n-somerset.gov.uk)

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