

PLANNING OBLIGATION BY DEED OF AGREEMENT
UNDER SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990.

RELATING TO.

RESIDENTIAL DEVELOPMENT AT LEEKBROOK
JUNCTION, STAFFORDSHIRE.

MADE BETWEEN

MOORLAND & CITY RAILWAYS LTD

AND

STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL.

AND

CHURNET VALLEY RAILWAY (1992) PLC.

FIRST DRAFT

DATED

2015

This Agreement is made by the day of 2015

Between

- 1) Moorland & City Railways Ltd registered in England and Wales with company number 06820433 and whose registered office is at The Keele Centre, Three Mile Lane, Keele, Newcastle under Lyme, Staffs, ST5 5HH. (MCR)
- 2) Staffordshire Moorlands District Council of Moorlands House, Stockwell Street, Leek, Staffordshire Moorlands, ST13 6HQ. (The Council.).
- 3) Churnet Valley Railway (1992) PLC, registered in England & Wales with company number 02760505 and whose registered office is Kingsley & Froghall Station, Froghall, Stoke on Trent, Staffordshire, ST10 2HA (CVR)

1) BACKGROUND

- 1.1 The Council is the local planning authority for the purposes of the Act for the area in which the Application Site is situated.
- 1.2 MCR is the owner of the Application Site.
- 1.3 CVR is the operator of heritage tourist railway services over adjacent lines and will be the operator of services on the Leek Railway.
- 1.4 MCR has submitted the Application to the Council in respect of residential development.
- 1.5 MCR has undertaken to provide funding for the development of the Leek Railway from the sale proceeds of the Application Site in accordance with the terms of this Deed.
- 1.6 The Council has resolved to approve the Application subject to the terms of this Deed.

2) DEFINITIONS

For the purposes of this Deed, the following expressions shall have the following meanings :

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| 1990 Act | : | The Town & Country Planning Act : 1990. |
| Application | : | The application for outline planning permission on the Application Site dated February 2015 submitted to the Council and allocated reference number SMD/2014/0090. |
| Application Site | : | The land subject to the Application and owned by MCR under title number |
| New Road Land | : | The land subject to the Application and owned by the Council under title number . |

The Leek Railway	:	The new railway to be constructed from MCR's current railway at Leekbrook Junction for a distance of approximately 1400M along the trackbed of the former Churnet Valley Line to the Cornhill area of Leek, all as specified in the Track Estimate Commentary.
Track Estimate Commentary	:	The specification and estimated construction cost of the Leek Railway detailed in the report dated January 2014 prepared for MCR by the Capita Group.
Construction Cost	:	The estimated construction cost of the Leek Railway as detailed in the Track Estimate Commentary and amounting to the sum of £567,400.
Planning Permission	:	The outline planning permission subject to conditions to be granted by the Council pursuant to the Application as set out in the Schedule.

3) CONSTRUCTION OF THIS DEED

- 3.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 3.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 3.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 3.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 3.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 3.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council, the successors to their respective statutory functions.
- 3.7 The headings and contents list are for reference only and shall not affect construction.

4) LEGAL BASIS

4.1 This Deed is made pursuant to Section 106 of the Act.

4.2 The covenants, restriction and requirements imposed on MCR, CVR and the Council under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by MCR, CVR and the Council against each other.

5) PROVISION OF FUNDING

5/1 For funding purposes, the land subject to this agreement comprises the land edged respectively red (the red land) and blue (the blue land.) on the plan attached to this Deed.

5/2 MCR's contribution to the construction cost of the Leek Railway will be the net sale proceeds of the blue land subject to a maximum contribution of £300,000.

5/3 In the event that a disposal of the whole of the blue land takes place as a single transaction, MCR will, on completion of that transaction, deposit the whole of the net sale proceeds into a bank account opened by the Council in accordance with this Deed up to a sum equivalent to MCR's maximum contribution.

5/4 In the event that the disposal of the blue land takes place as a series of transactions, whether related or not, MCR will, on completion of each sale of single or multiple plot tranches, deposit the whole of the net sale proceeds with the Council up to a sum equivalent to MCR's maximum contribution.

5/5 On completion of each sale under 5/3 and 5/4, MCR will produce to the Council evidence of the transaction and the net price obtained by MCR.

5/6 It is acknowledged by all parties to this Deed that there is a shortfall in funding for the Leek Railway, this being the difference between the construction cost as set out in the Track Estimate Commentary and MCR's contribution under the terms of this Deed.

Immediately following the completion of this Deed, the Council, MCR and CVR will co-operate together and will jointly use all reasonable endeavours to raise the balance needed for the construction of the Leek Railway.

Any source of funding which is acceptable to all three parties may be used for this purpose and this may include, without limitation as to source, the following which have already been identified by the parties :-

- a) Public investment funding which may at any time be available to the Council.
- b) Developer contributions from projects which interrelate with the railway.
- c) A public share issue promoted by the CVR.

6) RESTRICTIONS ON DEVELOPMENT

6/1 Development in respect of the whole or any part of the blue land permitted by the Planning Permission may proceed at any time and without restriction provided that

the relevant Construction Cost calculated in accordance with 5/3 and 5/4 has been paid to the Council.

6/2 Development in respect of the whole or any part of the red land permitted by the Planning Permission may proceed at any time and without restriction.

7) DEPOSIT OF FUNDS AND PAYMENT MECHANISM

7/1 The Council will open a new dedicated bank account in the name of the Council at any UK clearing bank of its choice other than the Co-operative Bank PLC.

7/2 The Council will ensure that the account carries interest at a commercially appropriate rate.

7/3 The Council will ensure that the account will only hold funds deposited by MCR in accordance with the provisions of this Deed together with accrued interest.

7/4 The Council will ensure that MCR is copied with all bank statements relating to the account as and when they are received by the Council.

7/5 MCR may direct the Council at any time to make payments from the account in relation to the construction of the Leek Railway.

7/6 The Council may not make any withdrawals from the account other than as permitted in 7/5.

7/7 Directions for payments from the account by MCR shall be accompanied by the relevant invoice and a certificate from the Capita Group (or any other technical consultancy appropriately qualified for a project of this type which may from time to time be appointed by MCR.) confirming that the amount requested is correct, fairly relates to the works contained in the detailed specification for the project and that the works covered by the payment request are of satisfactory quality.

7/8 MCR may only direct payments be made in respect of work contained in the Track Estimate Commentary, or such other work as may be agreed in writing with the Council.

7/9 If, within a period of 3 years commencing on the date of the granting of the Planning Permission, construction of the Leek Railway has not been commenced through no fault of MCR or CVR, its consultants or contractors, or if the Council decided within this period not to proceed with the project, then all monies, including interest, held in the account will be returned to MCR and will be applied to funding elsewhere on the MCR/CVR Network

If, within the same time period, the Leek Railway has not been commenced due to reasons directly attributable to MCR or CVR, its consultants or contractors, the Council may proceed with the project itself and utilise monies held in the account for that purpose.

8) DEDICATION OF THE NEW ROAD LAND.

8/1 The New Road Land is that area of land in the ownership of the Council required to provide the road access to the Application Site proposed as part of the Application and shown more particularly on plan number attached to this Deed.

8/2 Within 8 weeks of the granting by the Council of Planning Permission, the Council as landowners will dedicate the New Road Land at no cost to MCR or its successors in title for public highway purposes shown on the plans attached to the application.

8/3 The Council will at no time be under any obligation to MCR or their successors in title to construct or be responsible for the cost of any road works on the New Road Land.

9) APPLICATION FOR PLANNING PERMISSION FOR THE LEEK RAILWAY
(THE LEEK PLANNING PERMISSION).

9/1 Within 1 month of the completion of this Deed, the Council will apply at its own expense to the Local Planning Authority for planning consent in respect of that part of the Leek Railway which is constructed on land in the ownership of the Council.

9/2 MCR and CVR will jointly provide the Council with plans, specifications and track layout diagrams such as may be reasonably required by the Council for the purposes of the Leek planning application.

9/3 The Council as applicant will promote the Leek planning application with all due diligence and will keep MCR and CVR fully informed as to progress with the application.

9/4 The Council will provide MCR and CVR with a copy of the decision notice following determination of the Leek application.

10) TRANSFER OF LEEK RAILWAY TRACKBED TO CVR

10/1 The Council are the owners of part of the trackbed required to construct the Leek Railway (the trackbed.) and which is shown edged red on the attached plan no. and part of title no.

10/2 Within 4 weeks of the Leek Railway becoming fully funded and the granting of the Leek Planning Permission, whichever is the later, the Council will transfer the freehold interest in the trackbed to the CVR at the nominal price of £1.00.

11) CONSTRUCTION OF THE LEEK RAILWAY

11/1 As soon as is reasonably practical after the transfer of the freehold interest in the trackbed in accordance with the terms of this Deed, the CVR will commence and complete as soon as is practical the detailed design for the construction of the Leek Railway from its proposed junction with the CVR/MCR network at Leekbrook to the new station site at Leek.

- 11/2 The detailed design will include such plans, sections, programme and technical specifications as may be required by CVR and in order to complete the detailed design, CVR may commission such technical and professional design input from appropriate consultants as it deems necessary.
- 11/3 The detailed design will be to an equivalent standard to the rest of the CVR/MCR network being a standard appropriate to heritage and light passenger use and fully complying with the standards required by HM Railway Inspectorate and the provisions of the Leek Planning Permission.
- 11/4 As soon as is practical following completion of the detailed design, the CVR will construct the Leek Railway in all respects to the detailed design and the programme.
- 11/5 The CVR will keep the Council and MCR fully informed as to progress and will allow representation of both parties on reasonable notice to attend site and design meetings and to inspect the progress of the works.
- 11/6 On completion of the Leek Railway, the CVR will obtain written approval from HM Railway Inspectorate that the works have been completed to a standard to permit the operation of the railway.
- 11/7 Immediately following receipt of the running approval from HM Railway Inspectorate, the CVR may commence heritage passenger services over the Leek Railway.

12) TRANSFER OF LEEK STATION SITE TO CVR.

- 12/1 An area of land (the Station land.) within the Cornhill Development (as defined by planning application number SMD 2014/750) has been reserved for the construction of the new Leek station together with associated passenger platform.
- 12/2 Within 4 weeks following the completion of the construction of the Leek Railway as defined in clause 11/6 of this Deed, the Council will procure that the freehold interest in the Station Land is transferred to the CVR at the nominal price of £1.00.

13) MISCELLANEOUS.

- 13/1 MCR shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed amounting to the sum of £ x.
- 13/2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 13/3 This Deed shall be registrable as a local land charge by the Council.
- 13/4 Where the agreement, approval, consent, expression of satisfaction or action is required by MCR from the Council under the terms of this Deed such agreement, approval, consent, expression of satisfaction or action shall not be unreasonably withheld or delayed.

Any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

- 13/5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 13/6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 13/7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of MCR) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 13/8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 13/9 This Deed shall not be enforceable against owner-occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.
- 13/10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 13/11 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

14) WAIVER

No waiver (whether expressed or implied) by the Council or MCR of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or MCR from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

15) VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

16) DISPUTE PROVISIONS

- 16/1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be

referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 16/2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 16.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 16/3 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 16/4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

17) JURISDICTION

- 17/1 This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.