

**NORTH SOMERSET COUNCIL  
DECISION**

DECISION OF THE EXECUTIVE MEMBER FOR STRATEGIC PLANNING,  
HIGHWAYS & TRANSPORT/ECONOMIC DEVPT/HOUSING  
WITH ADVICE FROM THE DIRECTOR OF DEVELOPMENT AND  
ENVIRONMENT



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**DECISION NO: 16/17 DE 238**

**SUBJECT: South Bristol Link**

**BACKGROUND:**

The South Bristol Link (the Scheme) secured planning permission and compulsory purchase powers to enable its construction during 2013 and 2014. Since then work has been progressing and the Scheme is now at the point where it is ready to be opened for use by the general public.

Part of the Scheme required the construction of a bridge under the railway line to the north of Parson Street station. To achieve this the Council has worked closely with Network Rail and has entered into a number of agreements with them. The Council has also acquired land to enable the construction of the bridge.

The land on which the bridge has been constructed was previously owned by Viridor and used for an engineered landfill site. The Council has acquired the majority of the land by agreement from Viridor. It is shortly to acquire a small shortfall of land totalling 39 square metres from Viridor on the same terms as the previous transfer. The need for this has resulted as a wing wall for the bridge has been constructed just outside the land acquired by the Council. The Council has agreed to transfer all the land which forms part of the bridge over the new road to Network Rail so that they are in control of the land on which their infrastructure is built.

Due to the nature of the previous use of the land when the Council acquired it from Viridor it entered into a number of positive covenants including accepting liability for any future pollution arising from the use of the land by the Council. The Council considered the risks involved in accepting the positive covenants when it acquired the land and it decided that there was minimal risk to not being able to comply with the covenants or incurring costs in ensuring compliance.

There is also an obligation on the Council to ensure that any future purchaser accepts and takes on these positive covenants. Network Rail have agreed to provide the deed of covenant, however, because the Scheme does not have any benefit for their infrastructure they are not able to be put in a position where they may incur any costs arising from it, which includes any costs arising from agreeing to comply with the positive covenants through the deed of covenant.

Therefore, in order to progress the transfer of the land to Network Rail it is proposed that the Council will give an indemnity to Network Rail for all liabilities, damages and direct losses suffered and all reasonable costs and expenses properly incurred by Network Rail arising pursuant to, out of or in connection with the positive covenants.

The Council will not be liable in respect of losses, damages or expenses attributable to and/or to the extent contributed to by any act, default or negligence on the part of Network Rail or any of Network Rail's employees, agents, contractors, tenants or any other party for whom Network Rail is responsible at law.

Network Rail must use reasonable endeavours to mitigate any losses, damages or expenses to the extent that would be required pursuant to common law when prosecuting a claim in respect of the positive covenants.

The area of land being transferred to Network Rail is comparatively small when compared to the land being retained and because construction works upon the land have been completed it is not expected that there is any real risk of a breach of the positive obligations in the future. However, there remains the possibility that the covenants are not complied with by Network Rail and that the Council will be required to meet the costs of complying with the positive covenants in the future. It is not possible to place a figure on the costs of complying with the positive covenants because they include obligations to ensure that environmental pollution, if it occurs, is rectified.

The Council is also agreeing to indemnify Network Rail against all liabilities, damages and direct losses suffered and all reasonable costs and expenses properly incurred by Network Rail arising as a result of Network Rail being unable to exercise the rights granted to Network Rail in the Deed of Easement for the parking spaces located to the south of the Network Rail bridge as a result of the covenants and rights which have been reserved by Viridor in the Viridor Transfers. The indemnity is subject to the same caveats as the positive covenants indemnity mentioned above and is also capped at a maximum of £50,000 per claim or series of claims arising out of the same event. The indemnity is also subject to Network Rail providing the Council with advance notice, except in an emergency, of its intention to exercise the rights granted by the Deed of Easement.

The parking spaces are provided for Network Rail to maintain the under bridge which typically involves a routine inspection once every two years.

As this is an urgent decision which has not been advertised on the Forward Plan and we have not complied with the normal five days advance notice the Council's urgent decision process has therefore been followed.

#### **DECISION:**

To agree that the Council can give the two indemnities to Network Rail.

#### **Reasons:**

The Council has already agreed with Viridor to comply with the positive covenants and it will need to continue to comply with these over the land which it will continue to own. In addition if the Council was not to transfer the land to Network Rail it would need to continue to comply with the positive covenants therefore the Council is not accepting any greater risk of liability.

The indemnity includes a requirement for Network Rail to mitigate its losses and an exclusion from liability for the Council where Network Rail has caused the liability to arise which provides some protection to the Council in the event that the indemnity is called upon in the future.

In respect of the indemnity for the Deed of Easement, Network Rail is adamant that it requires to be held harmless by the Council. The risk of the spaces being unavailable for use by Network Rail is considered to be minimal. Additionally there is a requirement for Network Rail to provide notice to the Council of when they wish to use the parking space so that the Council can ensure it is available which further reduces the likelihood of the indemnity being called upon.

**Other Alternatives Considered:**

Negotiations with Network Rail have tried to avoid the need for the indemnities but this has not been possible and the breadth of the indemnities to be provided have been limited so far has been possible.


**Financial Implications:**

The indemnity in respect of compliance with the positive covenants being provided could result in the Council being required to spend an unlimited sum to ensure compliance with the positive covenants in respect of the land and to reimburse Network Rail for any losses they have suffered.

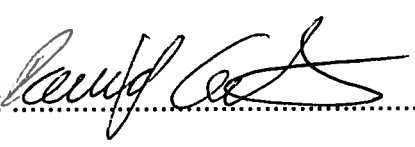
The indemnity for the inability to use the parking spaces under the Deed of Easement has been limited to £50,000 per claim with the Council being able to take steps to ensure there is no inability to use the parking spaces

**Implications for Future Years:**

As above in financial implications because the indemnity will be operative for as long as Network Rail own the land.

Signed: .....The Executive Member for Strategic Planning, Highways, Economic Development and Housing

Dated: .....19/12/16.....

Signed: ..... Director of Development & Environment

Dated: .....19/12/16.....