

Les Waters
Manager, Network Regulation
Telephone 020 7282 2106
Fax 020 7282 2042
E-mail les.waters@orr.gsi.gov.uk



21 July 2008

Jon Haskins Esq
Regulatory Legal Specialist
Network Rail Infrastructure Limited
40 Melton Street
London
NW1 2EE

Dear Jon

Establishment of a multi-site joint venture for the development of Network Rail stations and other property assets

We have today consented under condition 12 of Network Rail's network licence to Network Rail establishing a multi-site joint venture for the development of Network Rail stations and other property assets. I enclose a copy of the notice sent to Hazel Walker.

You wrote to us on 11 September 2007 requesting consent and set out some background on Network Rail's proposal to enter into a joint venture for the development of property at around 8 to 12 sites in south-east England. In your letter you explained how Network Rail's land disposals to developers had meant that most of the profit from any subsequent development of the land was retained by the developers. By entering into a joint venture with a development delivery partner, Network Rail would benefit from its partner's skills, allowing it to maximise the value of its land and bring forward stations enhancements.

Our prime concern is to ensure that Network Rail Infrastructure Limited (NRIL) is not exposed to undue financial risk. We think, therefore, that it is important to limit NRIL's risk e.g. through the adoption of an appropriate corporate structure. We have also looked to see whether the joint venture would raise any issues for the operation of the network and checked that there are no competition issues arising.

We have looked at the way you proposed that the joint venture would be structured through the draft heads of terms and you have provided information relating to the level of financial contribution and indicative project returns.

Operational risks

We note that the proposed contractual arrangements with your development partner are such that any improvements to station facilities will be delivered prior to the construction



of any non-railway facilities. We recognise that this arrangement was designed to incentivise your partner to deliver any railway facilities required at an early stage in the project concerned, thus mitigating the risk of their delay or completion.

Please be aware though, that our consent under condition 12 does not remove the need for Network Rail to obtain our consent under condition 26 for any disposal of land in connection with this proposal. We will consider any specific risks to the operation of the network on a site-by-site basis under that process.

Any decision to grant consent under condition 26 will also take into account whether a problem with any part of a development could cause Network Rail to incur costs in the event of structural problems once the development has been completed. We would expect such details to form part of the background in any condition 26 notification so that we may consider the protection afforded to Network Rail, its network, and the users of railway services.

Corporate structure and financial risks

In order to enter into the joint venture, you proposed to establish a limited liability partnership, in which Network Rail would have equal control over the project with its development partner. Specifically, Network Rail would form a new subsidiary company (to be known as NR Developments) through which it would invest in the property regeneration partnership joint venture. NR Developments would hold a 49.95% stake in the property regeneration partnership, as would its development partner. The remaining 0.1% ownership stake would be held by another new company (the “General Partner”), which would be jointly-owned by Network Rail and its development partner. The relationship between the companies is shown in the diagram you provided us at Annex A.

We consider that this approach is appropriate as a limited liability partnership structure would limit the exposure of risk to NRIL. It is important that NRIL is not exposed to any undue financial risk and not face any financial risk beyond its contribution to the project. We have therefore attached a condition to our consent which means that Network Rail must participate in the joint venture on a limited liability basis.

However, even with a limited liability structure in place, we cannot allow Network Rail's network business to contribute an unspecified amount of money or assets into the proposed arrangements. We think, therefore, that it is appropriate to impose a financial cap to our consent as a mitigation measure to protect the network business from financial risk.

We have noted your statements that Network Rail expects to complete the development portfolio within a contribution level of £100million. However, the financial data you provided indicates, at a high-level, that your contributions will be around £50m. We therefore think that £50m provides a reasonable limit for NRIL's contribution to this project and a cap at this level does not expose NRIL to undue financial risk. The *de minimis* facility will remain available to give Network Rail the headroom you envisage

for contributions beyond this. We may, of course, review the level of the cap in the future, if it is appropriate to do so.

Competition issues

We have considered whether there are any competition issues arising from this joint venture. We think that it is unlikely that the proposal will give rise to such issues because your partner in this joint venture was selected through an open tender competition. We also consider that your selection of a partner through an OJEU competitive tendering process suggests that the proposed deal should secure rewards toward the top of the market value.

Conclusion

Based on the information provided by you, we have decided to grant our consent to this venture under condition 12 of the network licence. However, for the reasons set out above, we consider that we should protect the interests of the users of railway services by attaching conditions to our consent. These will ensure that NRIL enters its commercial arrangements on a limited liability basis, and that the total amount invested is restricted to a level of £50m, with any additional contributions being counted toward Network Rail's *de minimis* limit.

We consider that, taken together, this will allow the company to deliver its envisaged objectives for the benefit of its stakeholders, while placing an appropriate level of regulatory control to mitigate against risk on Network Rail Infrastructure Limited.

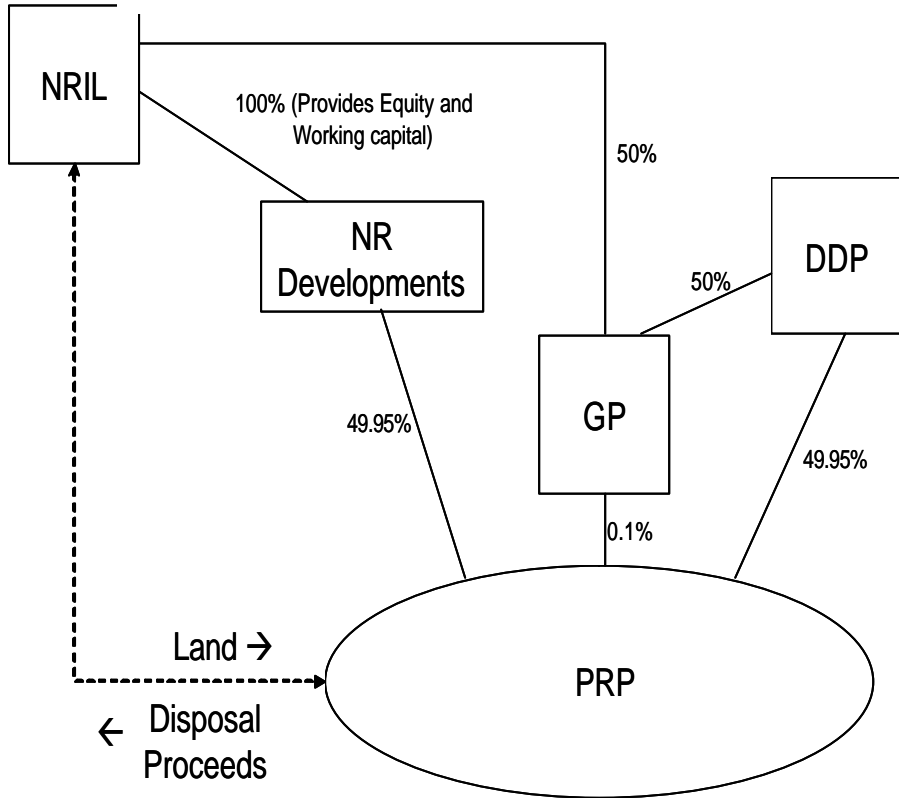
I enclose a copy of the notice. A copy will be placed on our public register and website, along with a copy of this letter.

Yours sincerely

A handwritten signature in blue ink that reads 'Les Waters'.

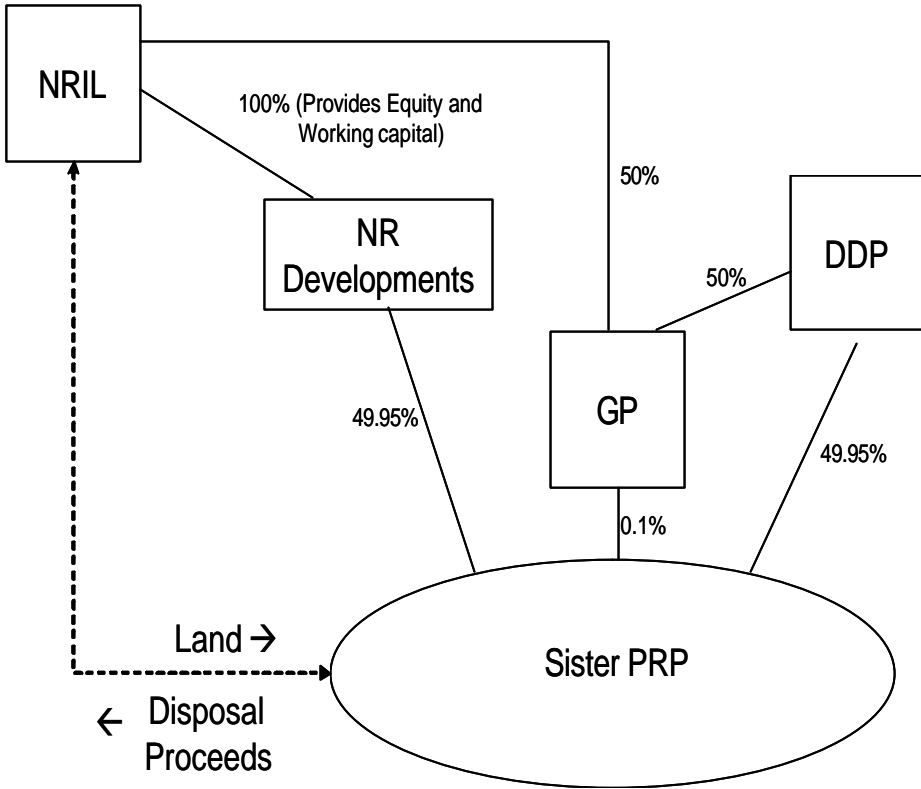
Les Waters

**PRP – Limited Partnership
Scheme value creation
(with option to deliver)**



Scheme Transfer

**Sister PRP
Site specific for delivery**



NRIL – Network Rail Infrastructure Limited
 NR Developments – new company established to hold the investment in the JV
 GP (this is the General Partner as required by the legislation relating to Limited Partnerships) will be a new limited company 50% owned by NRIL and 50% owned by the DDP (Development Delivery Partner).
 Parentage shareholding is represented by the percentage number on the line connecting parent and subsidiary/partnership. For example, NRIL owns 50% of GP.