

**WATERWAYS INFRASTRUCTURE TRUST**  
**CONSOLIDATED TRUST SETTLEMENT AS AT 8 JUNE 2023**

**between**

**The Secretary of State for Environment,**

**Food and Rural Affairs**

**and**

**Canal & River Trust**

THIS TRUST SETTLEMENT was made on 28 June 2012 and was supplemented by way of a Refinement Agreement in 2014 and amended by a Deed of Variation on 8 June 2023 in each case between:

- (A) THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS of Nobel House, 17 Smith Square, London SW1P 3JR (the "**Settlor**");  
and
- (B) CANAL & RIVER TRUST, a company limited by guarantee with its registered office at First Floor North, Station House, 500 Elder Gate Milton Keynes MK9 1BB (Charity Number 1146792 and Company Number 07807276) (the "**First Trustee**")

(together, the "**Parties**").

WITNESSES AS FOLLOWS:

## **1 INTRODUCTION**

- 1.1 In 2012, the Settlor transferred a wide range of property previously held by the public corporation known as the British Waterways Board (together referred to as the "**Waterways Property**" in this Settlement) out of public ownership and into the charity trusteeship of the First Trustee, a company established in England and Wales, for the charitable purposes set out in its Articles of Association.
- 1.2 The Settlor transferred those parts of the Waterways Property which are not the subject of this Settlement (the "**Transferred Assets**") to the First Trustee and to a subsidiary community interest company, Canal & River Trading CIC (registered number 08069602) as their corporate property.
- 1.3 The Settlor and the First Trustee agreed the framework for the funding of the First Trustee, by means of a Grant Agreement entered into between the Settlor and the First Trustee on or around the date of this Settlement (the "**Grant Agreement**"). They also agreed further terms relating to the relationship between the Settlor and the First Trustee which were documented within a non-binding Memorandum of Understanding between the two parties on or around the date of this Settlement (the "**Memorandum of Understanding**").
- 1.4 In addition to the Transferred Assets referred to at Clause 1.2 above, the Settlor identified certain parts of the Waterways Property (as set out in the Schedule to this Settlement) to be transferred to the First Trustee

to hold permanently for the benefit of the public, for the purposes and on the terms set out in this Settlement. As the first part of the Infrastructure Property (as defined in Clause 13), the Settlor paid to the First Trustee the sum of £10 to be held on the trusts set out in this Settlement concerning the Infrastructure Property.

1.5 The Settlor transferred the Waterways Property, including the property referred to in Clause 1.4, to the First Trustee by means of The British Waterways Board Transfer Scheme 2012 (the "**Transfer Scheme**"), under the authority of the Public Bodies Act 2011. The Transfer Scheme (and any associated documentation issued by the Settlor) identified the property transferred to the First Trustee for the purposes of this Settlement.

1.6 Both Parties envisage that the sole Trustee of this Settlement shall be the First Trustee and that the directors of the First Trustee shall act (in accordance with the Articles of Association of the First Trustee) to properly exercise the powers and responsibilities conferred by this Settlement. Nevertheless, at Clauses 4.3 and 4.6, this Settlement provides for the Settlor to appoint an additional or replacement Trustee in prescribed circumstances.

1.7 Compliance with the terms of:

1.7.1 this Settlement (and, in particular, the provisions contained in Clause 2, which the Settlor hereby confirms are fundamental to the purpose and the spirit of this Settlement);

1.7.2 the Grant Agreement; and

1.7.3 any other agreements between the Parties which both Parties agree to be fundamental to this Settlement;

shall in each case be fundamental to the intention of the Settlor in transferring the Waterways Property.

1.8 In 2014, the working definition of the Infrastructure Property in the Schedule to this Settlement was further refined by the Settlor and the First Trustee, by way of a Refinement Agreement.

1.9 In 2023, this Settlement was amended by the First Trustee in accordance with its terms to reflect changes to the relationship between the Parties, by way of a Deed of Variation.

1.10 Further money or property may be paid or transferred to the Trustee for the purposes set out in this Settlement.

1.11 The name of this Settlement shall be **The Waterways Infrastructure Trust**.

## **2 OBJECTS**

The objects of this Settlement (the "**Objects**") are as contained in this Clause 2.

2.1 Subject to Clause 2.2 and 2.3, to hold in trust and retain in perpetuity for public benefit the Infrastructure Property for the following purposes:

2.1.1 to operate and manage the Infrastructure Property for public benefit, use and enjoyment including:

- (a) for navigation;
- (b) for walking on towpaths; and
- (c) for recreation or other leisure-time pursuits of the public in the interest of their health and social welfare;

2.1.2 to protect and conserve, for public benefit, sites, objects and buildings of archaeological, architectural, engineering or historic interest on, in the vicinity of, or otherwise associated with the Infrastructure Property;

2.1.3 to further, for public benefit, the conservation, protection and improvement of the natural environment and landscape of the Infrastructure Property.

2.2 To use the income (which expression shall not include the proceeds of any Capital Disposal of the Infrastructure Property) for the purposes set out in Clause 2.1 and the following purposes:

2.2.1 to protect and conserve, for public benefit, sites, objects and buildings of archaeological, architectural, engineering or historic interest on, in the vicinity of, or otherwise associated with Inland Waterways;

2.2.2 to further, for public benefit, the conservation, protection and improvement of the natural environment and landscape of Inland Waterways;

- 2.2.3 to promote, facilitate, undertake and assist in, for public benefit, the restoration and improvement of Inland Waterways;
- 2.2.4 to promote and facilitate, for public benefit, awareness, learning and education about Inland Waterways, their history, development, use, operation and cultural heritage, by all appropriate means including the provision of museums;
- 2.2.5 to promote sustainable development (as defined by Clause 13) in the vicinity of any Inland Waterway for the benefit of the public, in particular by:
  - (a) the improvement of the conditions of life in socially and economically disadvantaged communities in such vicinity; and
  - (b) the promotion of sustainable means of achieving economic growth and regeneration and the prudent use of natural resources; and
- 2.2.6 to further any purpose which is exclusively charitable under the law of England and Wales connected with Inland Waterways;

provided that in each case where the Trust undertakes work in relation to property which it does not own or hold in trust, any private benefit to the owner of the property is merely incidental.

- 2.3 So long as the objects of the First Trustee remain compatible with the objects set out in Clause 2.2 above, the First Trustee shall be entitled to appropriate any income derived from the Infrastructure Property to be applied for the First Trustee's charitable purposes and pending such application, may hold such income as the First Trustee's corporate property.
- 2.4 Nothing in this Settlement shall require the Trustee to dedicate any part of the Infrastructure Property as a public highway nor shall it be taken as evidence of any such intent.

### **3 POWERS**

The Trustee has the following powers, which may be exercised only in promoting the Objects:

- 3.1 to raise funds (but not by means of taxable trading) or impose charges for use of the Infrastructure Property (including use by vessels of any kind but excluding charging for pedestrian access to towpaths);
- 3.2 subject to the Objects, to borrow money and give security (but only in accordance with the restrictions imposed by the Charities Act);
- 3.3 to acquire or hire property of any kind;
- 3.4 subject to the Objects, to lease, grant easements, licences or other concessions or otherwise dispose of any property held upon the terms of this Settlement but only in accordance with any applicable restrictions imposed by the Charities Act;
- 3.5 to divert reasonable lengths of the route of free-access towpath away from a position immediately adjacent to the waterway:
  - 3.5.1 on a temporary basis and for reasonable periods only where such diversion is required for the purposes of temporary restrictions either to allow maintenance/repair works or to protect persons from risks to their safety; or
  - 3.5.2 on a permanent basis where such diversion is necessary to preserve the integrity of the curtilage of property suitable for setting aside for paid or restricted access on account of its special interest use or other quality;
- 3.6 to make grants or loans of money and to give guarantees;
- 3.7 to set aside funds for special purposes or as reserves against future expenditure;
- 3.8 to deposit or invest funds in any manner (but to invest only after obtaining such advice as the Trustee reasonably considers necessary and having regard to the suitability of investments and the need for diversification);
- 3.9 to delegate the management of investments to a financial or property expert (who, for the avoidance of doubt may be an employee or officer of the First Trustee), but only on terms that:
  - 3.9.1 the investment policy is recorded in writing for the financial expert by the Trustee;
  - 3.9.2 every transaction is reported promptly to the Trustee;
  - 3.9.3 the performance of the investments is reviewed regularly with the Trustee;

- 3.9.4 the Trustee is entitled to cancel the delegation arrangement at any time;
- 3.9.5 the investment policy and the delegation arrangement are reviewed at least once a year;
- 3.9.6 all payments due to the financial expert are on a scale or at a level which is agreed in advance and are reported promptly to the Trustee on receipt; and
- 3.9.7 the financial expert must not do anything outside the powers of the Trustee;
- 3.10 to insure the property subject to this Settlement against any foreseeable risk and take out such other insurance policies as may be required;
- 3.11 subject to Clause 7, to employ paid or unpaid agents, staff or advisers;
- 3.12 to pay the costs of forming this Settlement; and
- 3.13 to do anything else within the law which promotes, helps to promote or is incidental to the promotion of the Objects.

#### **4 THE TRUSTEE**

- 4.1 Subject to the Objects, the Trustee as charity trustee has control of the Infrastructure Property and any other property and funds held subject to this Settlement.
- 4.2 The Trustee (and any other sole corporate Trustee that there may be) shall have or shall within a reasonable period procure trust corporation status.
- 4.3 The Settlor shall have power to appoint a replacement or additional Trustee or Trustees, including herself, but only in any of the circumstances outlined in Clause 4.6.
- 4.4 If for any reason there is more than one Trustee, the Trustees shall as soon as reasonably practical amend the terms of this Settlement in accordance with Clause 10.1 to include appropriate provisions for its efficient administration in accordance with the Charities Act and accepted best practice.
- 4.5 Every Trustee must sign a declaration of willingness to act as a Trustee of the Waterways Infrastructure Trust.
- 4.6 The Trustee shall automatically cease to be the Trustee (and the Settlor shall immediately appoint a replacement Trustee or Trustees) if:

- 4.6.1 (if an individual) he is disqualified under the Charities Act from acting as a charity trustee or trustee for a charity;
- 4.6.2 (if an individual) he is incapable, whether mentally or physically, of managing his or her own affairs;
- 4.6.3 it resigns by written notice to the Settlor, but such resignation shall only take effect once the Settlor has appointed a replacement Trustee or Trustees;
- 4.6.4 any of the following circumstances arises:
  - (a) it is unable to pay its debts as and when they fall due;
  - (b) it becomes insolvent or subject to the appointment of an administrator or receiver (other than for the purpose of a bona fide internal reorganisation or amalgamation);
  - (c) a court makes an order that the Trustee be wound up;
  - (d) a meeting of creditors of the Trustee passes or a meeting of members or any class of members passes a resolution to wind-up the Trustee (other than for the purposes of a bona fide internal reorganisation or amalgamation);
  - (e) the Trustee is struck from the register at Companies' House or, if not applicable, is otherwise prohibited from continuing its activities under any legislation in force and/or by an order of a court of competent jurisdiction; or
- 4.6.5 the Trustee is unable to act for any reason.
- 4.7 Upon retirement the retiring Trustee will be entitled on written request to an indemnity from the continuing Trustee or Trustees of the Settlement in respect of any liabilities properly incurred during his, her or its trusteeship.
- 4.8 Upon the cessation of the First Trustee's trusteeship for whatever reason, the Settlor shall, within a reasonable period thereafter, take such steps as may reasonably be required to procure the discontinuation of the outgoing Trustee's statutory duties as trustee of the Infrastructure Property.
- 4.9 A technical defect in the appointment of a Trustee of which the Trustee is unaware at the time does not invalidate decisions taken by the Trustee.



## **5 PROCEEDINGS OF THE TRUSTEE**

- 5.1 The Trustee must hold at least four meetings each year. Where the Trustee is a corporate body, its proceedings will be governed by the terms of its governing documents relating to the meetings of its trustees.
- 5.2 A procedural defect of which the Trustee is unaware at the time does not invalidate decisions taken at a meeting of the Trustee.

## **6 DECISION-MAKING**

The Trustee has the following procedural powers in relation to decision-making:

- 6.1 to delegate any of its functions to committees (but all proceedings of committees must be reported to the Trustee) or to officers of the Trustee;
- 6.2 to make rules consistent with this Settlement to govern its proceedings and proceedings of committees; and
- 6.3 to make provisions consistent with this Settlement to govern the administration of this Settlement, including the use and application of the income, property and funds, the operation of bank accounts and the commitment of funds.

## **7 BENEFITS TO THE TRUSTEE**

- 7.1 The property and funds of this Settlement must only be used for promoting the Objects, subject to an appropriation of income made by the First Trustee in accordance with Clause 2.3, and do not belong to the Trustee.
- 7.2 It is expressly accepted by the Settlor that the First Trustee may, in its capacity as Trustee of this Settlement and in what it reasonably considers to represent the best interests of the Objects, deal with itself in its corporate capacity (whether pursuant to Clause 2.2 of the Objects or otherwise) and that such dealing will not represent a breach of the rule known as the self-dealing rule.
- 7.3 Subject to Clause 7.7, a Trustee or Connected Person may receive:
  - 7.3.1 reimbursement of reasonable out-of-pocket expenses (including authorised hotel and travel costs) actually incurred in the administration of this Settlement;
  - 7.3.2 interest at a reasonable rate on money lent to this Settlement;

- 7.3.3 a reasonable rent or hiring fee for property let or hired to this Settlement;
  - 7.3.4 an indemnity in respect of any liabilities properly incurred in the running of this Settlement (including the costs of a successful defence to criminal proceedings);
  - 7.3.5 payment to a company in which the Trustee has no more than a 1 per cent shareholding;
  - 7.3.6 any payment to, or investment in, any company in which the First Trustee holds more than a 1 per cent shareholding, provided that such payment or investment is made in accordance with any legal requirements which would apply to the First Trustee if it were to pay or invest its own funds in the same manner;
  - 7.3.7 the benefit of indemnity insurance;
  - 7.3.8 if an employee of the Trustee, any remuneration or benefits arising under the terms of that employment; and
  - 7.3.9 in exceptional cases, other payments or benefits (but only with the written approval of the Commission in advance).
- 7.4 The Trustee or a Connected Person may enter into a contract to supply goods or services to the Settlement in return for a payment or other material benefit if:
- 7.4.1 the goods or services are actually required for this Settlement and the Trustee decides, in accordance with the procedure in Clause 7.7, that it is in the best interests of the Objects to enter into the contract; and
  - 7.4.2 the nature and level of the remuneration is no more than is reasonable in relation to the value of the goods or services and is set in accordance with the procedure in Clause 7.7; and
  - 7.4.3 no more than a minority of the board of directors of the Trustee are interested in such a contract in any financial year.
- 7.5 The Trustee and any Connected Person may receive goods or services supplied by this Settlement on the same terms as a person who is not the Trustee.
- 7.6 Subject to Clauses 7.2 to 7.5, neither the Trustee nor any Director may receive any payment of money or other material benefit (whether direct or indirect) from this Settlement.

- 7.7 Whenever any Director has a personal interest in a matter to be discussed at a meeting of the Trustee or a meeting of the Directors and whenever a Director has an interest in another organisation whose interests are reasonably likely to conflict with those of this Settlement, he or she must:
- 7.7.1 declare an interest before discussion begins on the matter;
  - 7.7.2 withdraw from that part of the meeting unless expressly invited to remain;
  - 7.7.3 in the case of a personal interest not be counted in the quorum for that part of the meeting; and
  - 7.7.4 in the case of a personal interest withdraw during the vote and have not vote on the matter.

## **8 PROPERTY AND FUNDS**

- 8.1 Any funds which form part of the Infrastructure Property which are not required for immediate use (including those which will be required for use at a future date) must be placed on deposit or invested in accordance with Clauses 3.8 and 3.9 until needed.
- 8.2 Investments and other property of this Settlement may be held:
- 8.2.1 in the name of the Trustee;
  - 8.2.2 in the name of a nominee company acting under the control of the Trustee or of a financial expert acting under their instructions;
  - 8.2.3 in the name of a trust corporation as a holding trustee for this Settlement which must be appointed (and may be removed) by deed executed by the Trustee; or
  - 8.2.4 in the case of land, by the Official Custodian for Charities under an order of the Commission or the Court.
- 8.3 Documents and physical assets may be deposited with any company registered or having a place of business in England and Wales as custodian.
- 8.4 Any nominee company acting under Clause 8.2.2, any trust corporation appointed under Clause 8.2.3 and any custodian appointed under Clause 8.3 may be paid reasonable fees.

## **9 RECORDS & ACCOUNTS**

- 9.1 The Trustee must comply with the requirements of the Charities Act as to the keeping of financial records, the audit or independent examination of the accounts and the preparation and transmission to the Commission of:
- 9.1.1 annual returns;

- 9.1.2 annual reports; and
- 9.1.3 annual statements of account.
- 9.2 The Trustee must maintain proper records of:
  - 9.2.1 all proceedings at meetings of the Trustee;
  - 9.2.2 all reports of committees; and
  - 9.2.3 all professional advice obtained from external advisors for a period of ten years following receipt of such advice.
- 9.3 A copy of this Settlement's latest available statement of account must be supplied on request, within two months, to any person who makes a written request and pays this Settlement's reasonable costs.

## **10 AMENDMENTS**

- 10.1 The Trustee may vary the terms of this Settlement provided that no amendment to this Settlement is effective if it would:
  - 10.1.1 cause the Infrastructure Property to become disposable or otherwise expendable, otherwise than as provided for by Clause 2; or
  - 10.1.2 destroy the charitable status of the Settlement.
- 10.2 Clauses 2, 3.2, 4.6, 7, 10, 11 and 12, and insofar as it affects any of the foregoing provisions, Clause 13, may not be amended without the prior written consent of the Commission.

## **11 AMALGAMATION**

- 11.1 The Trustee may at any time, on a resolution passed by the Trustee, transfer the assets and liabilities of this Settlement to another charity provided that the Infrastructure Property continues to be held non-expendably for the Objects.
- 11.2 Any transferee charity must be established for exclusively charitable purposes within, the same as, or similar to the Objects.
- 11.3 On a transfer under Clause 11.1, the Trustee must ensure that all necessary steps are taken as to:
  - 11.3.1 the transfer of land and other property;
  - 11.3.2 the novation of contracts of employment and the transfer of any pension rights; and
  - 11.3.3 the trusteeship of any property held for special purposes.

## **12 DISSOLUTION**

- 12.1 The Trustee may at any time decide by resolution that this Settlement is to be dissolved. The Trustee will then be responsible for the orderly winding up of this Settlement's affairs.
- 12.2 After making provision for all outstanding liabilities of this Settlement, the Trustee must apply the remaining property and funds in one or more of the following ways:
- 12.2.1 by transfer to one or more other bodies established for exclusively charitable purposes within, the same as or similar to the Objects provided that the Infrastructure Property continues to be held non-expendably for the Objects;
  - 12.2.2 directly for the Objects or charitable purposes within or similar to the Objects; or
  - 12.2.3 in such other manner consistent with charitable status as the Commission shall approve in writing in advance.
- 12.3 A final report and statement of account relating to this Settlement must be sent to the Settlor and the Commission.

## **13 INTERPRETATION**

In this Settlement:

- 13.1 The following expressions have the following meanings:
- 'Capital Disposal' means a sale of freehold or a grant of a leasehold interest for a term in excess of 60 years, or grant of a leasehold interest containing an option to renew or extend the exercise of which would create a total tenure in excess of 60 years;
  - 'Charities Act' means the Charities Act 2011;
  - 'charity trustee' has the meaning prescribed by section 177 of the Charities Act;
  - 'Commission' means the Charity Commission for England and Wales or any body which replaces it;
  - 'Connected Person' means
    - (a) any spouse, civil partner, brother, sister, child, parent, grandchild or grandparent of a Trustee, any person in an equivalent relationship with a Trustee, a business partner of a Trustee, any firm of which a Trustee is a member or employee, a director or employee of a company of which a

- Trustee is a director or employee and any company of which a Trustee is a director, employee or shareholder having a beneficial interest in more than 1 per cent of the share capital;
- (b) if a Trustee is a corporate body then the references to "Trustee" in (a) above and in Clause 7 shall be taken as referring to any director or employee of such Trustee;

'custodian' has the meaning prescribed by section 17(2) of the Trustee Act 2000;

'Director' means a director of the First Trustee;

'financial expert' means an individual, company or firm who is authorised to give investment advice under the Financial Services and Markets Act 2000;

'financial year' means this Settlement's financial year;

'firm' includes a limited liability partnership;

'holding trustee' means an individual or corporate body responsible for holding the title to property but not authorised to make any decisions relating to its use, investment or disposal;

'indemnity insurance' has the meaning prescribed by the Charities Act;

'independent examiner' has the meaning prescribed by the Charities Act;

'Infrastructure Property' means:

- (a) the sum of £10 referred to at Clause 1.4;
- (b) all other (if any) property or assets, identified in the Schedule or otherwise, that may be transferred or paid to or under the control of the Trustee by any person to be held on the trusts set out in this Settlement and which are accepted by the Trustees as an addition to the Settlement;
- (c) all other accretions to the Settlement by way of accumulation of income or otherwise (but not income which is appropriated by the First Trustee pursuant to Clause 2.3, which shall, subject to the conditions in Clause 2.3, be treated and accounted for as the First Trustee's corporate property and not as Infrastructure Property); and
- (d) all money investments or other property for the time being representing all or any part of the above;

'Inland Waterways' includes (whether or not owned or held in trust by this Settlement) any river, canal, inland navigation, feeder channel, reservoir, dock, basin or harbour (in any case whether or not tidal or artificial) together with any associated land and works (including paths) and land formerly used for all such purposes;

'material benefit' means a benefit which may not be financial but has a monetary value;

'month' means calendar month;

'navigation' includes navigation by any ship or boat used for the carriage of freight and navigation by any ship or boat used also for human habitation (whether on a temporary or on a permanent basis);

'nominee company' means a corporate body registered or having a place of business in England and Wales;

'Objects' means the charitable objects set out in Clause 2;

'Settlement' or 'Trust' means the charitable trust created and governed by this Settlement;

'sustainable development' means development which meets the needs of the present without compromising the ability of future generations to meet their own needs;

'taxable trading' means carrying on a trade or business for the principal purpose of raising funds, and not for the purpose of actually carrying out the Objects, the profits of which are liable to income tax;

'trust corporation' has the meaning prescribed by section 205(1)(xxviii) of the Law of Property Act 1925 but does not include the Public Trustee;

'Trustee' means the First Trustee and any additional or replacement Trustee of this Settlement if appointed. For the avoidance of doubt it does **not** mean individual trustees, Director or members of the First Trustee;

'Welsh Ministers' has the same meaning as in the Government of Wales Act 2006;

'written' or 'in writing' refers to a legible document on paper or a document sent by electronic means which is capable of being printed out on paper; and

'year' means calendar year.

13.2 References to an Act of Parliament are references to the Act as amended or re-enacted from time to time and to any subordinate legislation made under it.

13.3 References to the singular shall be taken to include the plural and references to a gender shall be taken to include all genders.

## **SCHEDULE**

This Schedule contains a working definition of the Infrastructure Property for the purposes of this Settlement; this definition may be further refined by the Settlor and the First Trustee including through the use of maps and plans of chosen locations.

The Infrastructure Property shall include:

- 1.** All land and infrastructure which is necessary to—
  - (a) inland navigation on a waterway; or
  - (b) public access to, and use of, a towpath.
  
- 2.** Paragraph 1 includes, in particular—
  - (a) the navigation channel of a waterway extending to the rear of the towpath waterway wall and the offside water's edge.
  - (b) towpath (including any bridge over which it passes) extending to either—
    - (i) the rear of the boundary hedge or other boundary structure; or
    - (ii) in the absence of a defined boundary, to a width of three metres measured from the edge of the navigation channel;
  - (c) locks including side ponds, by-weirs, spillways and adjoining land required to ensure safe operation of the waterway;
  - (d) reservoir feeders;
  - (e) reservoirs to the maximum high water mark, head banks, dams and spillways;
  - (f) other structures, equipment or features necessary to the operation of the waterway and the supply of water thereto including, in particular—
    - (i) weirs,
    - (ii) sluices,
    - (iii) culverts,
    - (iv) drainage channels,
    - (v) winding holes,
    - (vi) pumping stations,
    - (vii) boat lifts; and



- (viii) land or structures supporting any such structures, equipment or features.
  - (g) access roads and paths including rights of access and similar easements;
  - (h) land and structures necessary for the support or protection of the navigation channel, feeder channel or towpath including in particular—
    - (i) embankments,
    - (ii) cuttings,
    - (iii) retaining walls,
    - (iv) tunnels, and
    - (v) aqueducts.
- 3.** Land or infrastructure is not excluded from paragraph 1 by reason of it being derelict or disused, if there is a realistic prospect of its restoration in the long term.