

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

By email only
EggboroughCCGT@pins.gsi.gov.uk

Your Ref:
Our Ref: (P)RPA.MKF.CED.CRT001.1037
Document No: wh19289005v2
Date: 29 November 2017
Direct Line: +44 (0) 191 204 4190
Direct Fax: +44 (0) 191 204 4001
Email Address: melissa.flynn@wardhadaway.com

Dear Sirs

Re: Application by Eggborough Power Limited for an Order Granting Development Consent for the Eggborough CCGT Project
Our Client: The Canal & River Trust
The Applicant: Eggborough Power Limited

We act on behalf of the Canal & River Trust ("the Trust") in relation to the above matter and write following our attendance at the Issue Specific Hearings which took place on 23 November 2017. The Examiner requested that we provide a summary of the Trust's position regarding the outstanding matters in relation to the draft Development Consent Order ("DCO"). We therefore summarise the position below.

1. **Draft DCO**

The Trust is grateful that the Applicant has included within the draft DCO submitted for deadline 2 the wording requested by the Trust in its representations dated 31 October 2017. The Trust did include within these representations a suggestion that the Trust is defined within Requirement 1 of Schedule 2. Having considered this further, we note that the Trust is in fact defined in the main body of the draft DCO at article 2 and therefore the inclusion of the Trust within Requirement 1 may not be necessary.

We would however suggest that the definition of the "Canal and River Trust" at article is amended to refer to the Trust's charitable status, as follows:

"Canal and River Trust means the body of that name which is a company limited by guarantee (Company No. 7807276) and a registered charity (Charity Commission No. 1146792) whose registered office is at First Floor, North Station House, 500 Elder Gate, Milton Keynes, MK9 1BB."

Ward Hadaway Solicitors

Sandgate House, 102 Quayside, Newcastle upon Tyne NE1 3DX
Tel: +44 (0)191 204 4000 Fax: +44 (0)191 204 4001 DX: 730360 Newcastle upon Tyne 30
Email: legal@wardhadaway.com Web: www.wardhadaway.com

Also at: Leeds and Manchester

Authorised and Regulated by the Solicitors Regulation Authority
(Registration Number 204387) A list of Partners is available at all offices.



2. Draft Protective Provisions

The Trust has not been in a position to agree with the Applicant the draft protective provisions which the Applicants propose are included within Schedule 11, Part 3 of the draft DCO. Whilst the Trust is encouraged by the proposed inclusion of the protective provisions, the Applicants are seeking to include certain exclusions from and limitations on this liability which are unacceptable to the Trust.

2.1 Applicant's proposal to cap its liability

In particular, the Applicant is seeking to impose a cap on their liability to the Trust. The Examiner is referred to paragraph 32(6) of the draft protective provisions included within the draft DCO for the submission 2 deadline.

The Trust cannot agree to a cap on the Applicant's indemnity for the following reasons:-

- 1) The Trust is a registered charity with finite resources. The Trust do not have the ability to meet any costs which may exceed the cap.
- 2) The Trust is receiving no benefit from the proposed development and therefore should not be put to any costs in respect of this.
- 3) The Trust is Navigation Authority for part of the River Aire and therefore have responsibilities to ensure safe navigation is maintained. This is a public interest which warrants protection in the provisions in the draft DCO.
- 4) The Applicants have previously indicated that they would be willing to comply with the Trust's Code of Practice for Works Affecting the Canal and River Trust (copy attached at Appendix 1). This code of practice is clear at paragraph 6.17 that any damage to the Trust's property must be reinstated and any costs must be reimbursed in full "without monetary limit".
- 5) A cap on indemnity is not ordinarily agreed as part of protective provisions. In particular, please refer to the Keuper Underground Gas Storage Facility Order 2017 which relates to a similar project and includes protective provisions recently negotiated by the Trust.
- 6) The parameters of the Applicant's obligations to the Trust are clearly defined by the protective provisions. The works to be undertaken by the Applicant are entirely within the Applicant's control and therefore it is reasonable for the Applicant to be responsible for the full extent of any costs to which the Trust are put by reason of the execution of these works.

2.2 Applicant's proposal to exclude its liability for consequential losses

In addition to the cap on the indemnity, the Applicants are seeking to exclude any liability for consequential losses (please see paragraph 32(2)(b) of the draft DCO submitted for deadline 2). The Trust does not consider that any losses suffered by the Trust as a consequence of the proposed development should be excluded. The Applicants are fully aware of the circumstances of the proposed works and have the ability to foresee all potential losses. We would reiterate points 1 to 4 above which

equally apply to this provision sought by the Applicant. We also note that no such exclusion was included within the Keuper Underground Gas Storage Facility Order 2017.

2.3 Miscellaneous matters

There are some additional outstanding points in respect of the protective provisions however the Applicant has suggested in discussions that these points can be addressed by some proposed amendments to the drafting. At this stage, we await proposed wording in respect of these points but we are hopeful that these can be agreed.

The exclusion and limitation of liability as proposed by the Applicant cannot be secured without the finite resources of the Trust being diverted away from its charitable objectives which amongst other things extends to safeguarding the safe navigation and public enjoyment of the canal. This is a point which we respectfully ask the Examiner to give careful consideration to at the time that he considers the public interests associated with the proposed DCO.

In order to assist the Examiner, we attach to this letter, a copy of the protective provisions which the Trust considers to be acceptable. These protective provisions were sent to the Applicant on 22 November 2017.

As reiterated at the Hearing, we will continue to negotiate with the Applicant in relation to the protective provisions however we considered that it was important to bring to the Examiner's attention the key outstanding points which are causing the Trust some concern.

Yours faithfully



Ward Hadaway 0