

**From:** [REDACTED]  
**To:** [Immingham OCGT](#)  
**Cc:** [REDACTED]  
**Subject:** EN010097 - VPI Immingham OCGT Project - Letter and Enclosures to Planning Inspectorate [CRSLLP-WORKSITE.FID280314570]  
**Date:** 12 September 2019 18:53:15  
**Attachments:** [REDACTED]

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Please see attached

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Our Ref: ANC/DKH/SCP/209087/00014  
Your Ref: EN010097

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12 September 2019

Dear Sirs

**Application by VPI Immingham B Limited for an Order Granting Development Consent for VPI Immingham OCGT Project  
Written Submissions, Summary and Responses to the Examining Authority's Written Questions pursuant to Section 89 of the Planning Act 2002 and the Infrastructure Planning (Examination) Procedure Rule 2010 - Rule 8**

We act on behalf of Air Products (BR) Limited ("APBR") and we refer to the relevant Rule 8 Letter.

We enclose for filing:

- Written Representations on behalf of APBR;
- Summary of Written Representations; and
- Responses to the Examining Authority's Written Questions (see below).

We respond to the Examining Authority's Written Questions as follows:

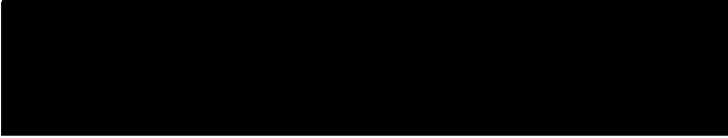
- 1 **Question 1.3.22:** APBR does not consider that the protective provisions set out in Schedule 9 [APP-005] are adequate for the reasons set out in our client's enclosed Written Submissions as well as our client's Section 42 Consultation Response and Initial Representations submitted previously.
- 2 **Question 1.14.4:** Please refer to the enclosed Written Submissions as well as APBR's Section 42 Consultation Response and Initial Representations submitted previously for further details of the impact the Project will have on APBR's business operations and affected infrastructure, further explanation as to why Advice Note 9 has not been followed and an update on ongoing discussions between the parties.

We reserve our client's right to provide further submissions and information in relation to the questions posed by the Examining Authority (and generally) in due course and as part of the ongoing Examination Process and as required.

.WKS/290843179.1

Kindly acknowledge receipt of this letter and enclosures.

Yours faithfully



**Charles Russell Speechlys LLP**

## VPI Immingham OCGT Project (EN010097)

### Development Consent Order Written Representations made on behalf of Air Products (BR) Limited

(made in accordance with the Examination Timetable and Procedure issued under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010)

#### Introduction

These representations are made on behalf of Air Products (BR) Limited (“**APBR**”), in response to the application for a Development Consent Order (“**DCO Submission**”) submitted by VPI Immingham B Ltd (“**Applicant**”) to the National Infrastructure Directorate on 15 April 2019 and pursuant to Directions issued by the Examining Authority on 15 August 2019.

Reference is made to the Development Consent Order Pre-Application Consultation Response submitted by APBR on 30 November 2018 (“**PCR**”) and also to the Initial Representations submitted by APBR on 20 June 2019 (“**IR**”).

APBR has interests in and around the vicinity of the area proposed for a Development Consent Order (“**DCO**”).

APBR (together with its parent, Air Products Plc) is a world-leading Industrial Gases company, providing atmospheric and process gases and related equipment and is also the world’s leading supplier of liquefied natural gas process technology and equipment.

In the area affected by the proposed Project, APBR is concerned with the supply of gas to local installations and forms a fundamental part of the local energy industry. APBR supplies Oxygen and Nitrogen, via pipelines, to refineries which are critical to their operation. In summary, APBR’s interests within the area proposed for the DCO comprise of a 4-inch nitrogen pipeline, a 6-inch oxygen pipeline and an 8-inch (reducing to 6-inch) oxygen pipeline

As a consequence, APBR is a Category 1 statutory consultee as defined by Section 44 of the Planning Act 2008.

The Applicant’s proposals to permanently acquire land and rights has the potential for conflicting with and compromising the security of existing pipes and associated infrastructure owned and/or used by APBR in connection with its pre-existing business activities.

It is therefore critical that, notwithstanding the Project, APBR can continue to use the pipelines in the manner in which it is accustomed to and which is vital to the local energy industry.

Furthermore, to the extent that land is acquired compulsorily by the Applicant (or any associated entity) and/or is due to be granted a legal interest in land through which APBR’s pipelines pass, APBR must be granted sufficient

rights and interests to maintain its use which has been established. Appropriate protective provisions are required to maintain the consistency of supply, safe use and maintenance of the infrastructure.

### **APBR's Concerns**

Paragraphs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 4.1, 4.2, 4.3, 4.4, 5.1, 5.2, and 5.3 are quoted verbatim from the PCR.

The serious concerns raised in the PCR by APBR have not been properly addressed by the DCO Submission.

Whilst it is the case that some amendment to the proposals has been made, such amendments do not in any way (or in any substantial way) satisfy APBR's concerns. All that the amendments to the proposals do is reduce the extent of APBR's interests in the area proposed for the DCO. However, APBR continue to have interests in (and around) the area proposed for the DCO and the concerns which APBR has raised previously continue to be extant.

Accordingly, APBR formally objects to the DCO Submission both for the reasons set out previously and as set out below.

The Applicant has failed to address the many issues raised by APBR in its PCR (APBR reserving its right to add to or otherwise amend this list of major concerns in due course):-

The documentation provided by the Applicant fails to demonstrate that the DCO will be delivered in a way that supports the needs of the DCO whilst not compromising or risking the integrity and/or maintenance needs of APBR's own gas pipeline infrastructure and/or such infrastructure in respect of which it has rights (and which is vital to the local energy industry);

The compulsory acquisition of land and rights in the terms proposed is not proportionate, or even necessary, and fails to properly account for the existence of the infrastructure belonging to and/or otherwise used by APBR and fails to ensure that APBR is granted sufficient rights and interest to maintain the use already established. It also fails to ensure that suitable protective provisions are provided to ensure that the consistency of supply, safe use and maintenance of the infrastructure can be safeguarded.

The construction process, disturbance and duration is not properly addressed in the DCO Submission. In the longer term, it is wholly unclear as to the impact that the DCO may have on the ability of APBR to continue its operations safely and economically (bearing in mind the stated intention that the underlying project would remain operational for at least 40 years).

APBR are still awaiting responses to the technical questions raised in the PCR, in particular at paragraphs 4.2, 4.3 and 4.4. These include, but are not limited to, the extent of rights sought, the anticipated construction process, timing, the infrastructure proposed to be installed, the impact on APBR's existing infrastructure and the method by which suitable protections will be put in place. These issues have not been considered or responded to (whether adequately or at all). The only response that has been provided by the Applicant to APBR is that the Applicant has

*“entered into dialogue with APBR to explain the project, existing gas pipeline and new pipeline routes and potential asset crossings”* (see Table 12.3 Document ref 5.1 of the Consultation Report). However, this statement is at best misguided. The dialogue exchanged between the Applicant/its legal representatives and APBR has been limited - all that the Applicant has said is that it proposes to alter the red line boundary so that the extent of APBR’s interests within the area of land affected by the DCO is reduced. Yet APBR continues to have interests within the affected land (albeit these are less than originally proposed) and so the concerns which it has set out previously remain and have not been addressed (either properly or at all).

It is acknowledged that discussions are ongoing but these discussions have not yet satisfied APBR’s concerns.

In accordance with Sections 42, 47, 48 and 49 of the Planning Act 2008, the Applicant has a *“duty to take account of responses to consultation and publicity”* (Section 49). For the reasons set out above and previously, APBR contends that inadequate consultation has taken place and that, notwithstanding the inadequate consultation, the Applicant has failed (whether adequately or at all) to take account of responses (from APBR and possibly others) to consultation and publicity.

‘Advice Note 9: Rochdale Envelope’ published by Infrastructure Planning Commission February 2011 states

*“Clearly for consultation to be effective there will need to be a genuine possibility to influence the proposal and therefore a project should not be so fixed as to be unable to respond to comments from consultees. The importance of consultation during the pre-application phase cannot be overemphasised...Such consultation needs to be appropriate (in terms of content, timing and clarity) and reported fully in the consultation report such that the response of the developer to the comments made in terms of the evolution of the proposals can be clearly understood”*.

Whilst the Rochdale Envelope is principally involved with environmental matters, it deals with principles which (in APBR’s submissions) are relevant to the Applicant’s approach to this matter.

It is evident that APBR’s concerns as raised in the PCR have not and are not being addressed within the DCO process.

Further, the only response given (as set out above) appears to demonstrate an inflexibility on the part of the Applicant to adapt the proposals to properly take into account submissions made by APBR (acknowledging that some, limited, adaptations have been made). Where a party has participated in the pre application consultation (as APBR did) its submission on the project made at that stage should have been fully reflected in the Consultation Report submitted as part of the DCO application and addressed. Again APBR submits that this has not been done (whether adequately or at all).

Accordingly, it therefore follows that Advice Note 9 has not been followed in the DCO process and the application now made.

APBR submits that the unreasonable level of inflexibility the Applicant is displaying is in itself a reason for the DCO to be refused.

APBR is rightly concerned that if terms cannot be agreed, the DCO in its present form (if approved) would enable the Applicant to acquire property and rights that may impact APBR's business negatively and the case for this is not properly addressed.

APBR is willing to engage in constructive dialogue with the Applicant for early agreement in respect of the DCO.

However, until this process has been completed or negotiations have been exhausted, APBR (and its associated entities) objects to the DCO in its present form for the reasons set out and reserves its rights to provide further submissions (beyond those provided to date) during the course of the DCO examination process.

APBR also claims an indemnity in respect of its costs, particularly given that APBR's opposition could have been avoided had proper consultation taken place and had the previous comments made by APBR been properly taken into account and actioned promptly.

APBR wishes (unless APBR notifies the Planning Inspectorate to the contrary) to be represented at, and to appear and adduce evidence at the Specific Issues/ Open Floor/ Compulsory Acquisition Hearings and also requests an Accompanied Site Inspection (noting that an Accompanied Site Inspection is now scheduled to take place on 1 October 2019).

**Charles Russell Speechlys LLP**  
**For and on behalf of Air Products (BR) Limited**

**Date: 12 September 2019**

## VPI Immingham OCGT Project (EN010097)

### Summary of Development Consent Order Written Representations made on behalf of Air Products (BR) Limited

In summary, the representations are made on behalf of Air Products (BR) Limited in response to the application for a Development Consent Order (DCO Submission) submitted by VPI Immingham B Ltd (Applicant) to the National Infrastructure Directorate on 15 April 2019. APBR has interests in and around the vicinity of the area proposed for a Development Consent Order (DCO).

The Development Consent Order Pre-Application Consultation Response submitted by APBR on 30 November 2018 is referred to as PCR. Initial Representations submitted by APBR on 20 June 2019 are referred to as IR.

APBR's concerns raised in the PCR and IR have not been properly addressed by the DCO Submission.

It is acknowledged that some amendments to the proposals have been made, the effect of which is to reduce the extent of APBR's interests and rights within the area affected by the Project. However, as APBR continue to have interests and rights within the affected area, and the DCO Submission has not addressed APBR's concerns which attach to those rights, the amendments do not fully satisfy APBR's concerns.

Accordingly, APBR formally objects to the DCO Submission for reasons set out in the PCR, the IR and summarised below:

- 1 The documentation provided by the Applicant fails to demonstrate that the DCO will not compromise or risk the integrity and/or maintenance needs of APBR's own gas pipeline infrastructure and/or such infrastructure in respect of which it has rights (and which is vital to the local energy industry);
- 2 The compulsory acquisition of land and rights in the terms proposed is not proportionate or necessary. The DCO Submission fails to account for existing infrastructure belonging to and/or otherwise used by APBR and fails to ensure that APBR is granted sufficient rights and interest to maintain its use. It also fails to ensure that suitable protective provisions are provided to ensure that the consistency of supply, safe use and maintenance of the infrastructure can be safeguarded.
- 3 The construction process, disturbance and duration is not properly addressed in the DCO Submission. It is wholly unclear as to the impact that the DCO may have on the ability of APBR to continue its operations safely and economically (bearing in mind the stated intention that the underlying project would remain operational for at least 40 years).
- 4 The Applicant has failed to address the technical questions raised in the PCR involving the extent of rights sought, the anticipated construction process and timing, the impact



on APBR's existing infrastructure and the method by which suitable protections will be put in place for such infrastructure.

APBR is concerned that if terms cannot be agreed, the DCO would enable the Applicant to acquire property and rights that may impact APBR's business negatively and the case for this is not properly addressed. Although discussions are ongoing, these discussions have not satisfied APBR.

APBR considers that inadequate consultation has taken place contrary to the provisions in Sections 42, 47, 48 and 49 of the Planning Act 2008.

Referring to the Advice Note 9: Rochdale Envelope published by Infrastructure Planning Commission February 2011, APBR considers that Advice Note 9 has not been followed in the DCO process and the application now made.

APBR also claims an indemnity in respect of its costs.

APBR is willing to engage in constructive dialogue with the Applicant for early agreement in respect of the DCO

However, until this process has been completed or negotiations have been exhausted, APBR (and its associated entities) objects to the DCO in its present form for the reasons set out and reserves its rights to provide further submissions (beyond those provided to date) during the course of the DCO examination process.