

# HyNet Carbon Dioxide Pipeline

Written Response Statement on behalf of Peel  
NRE

Planning Inspectorate Reference: EN070007

23 May 2023

**Turley**

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Amy Gaskell  
amy.gaskell@turley.co.uk

**Client**

Peel NRE

**Our reference**

PEEM2101

# 1. Introduction

- 1.1 This Written Response Statement has been prepared by Turley and Addleshaw Goddard on behalf of Peel NRE, an Interested Party, to the application by Liverpool Bay CCS Limited ('Applicant') for a development consent order ('Order') seeking powers for the delivery of the HyNet Carbon Dioxide Pipeline and related infrastructure (Planning Inspectorate Reference EN070007) ('Pipeline').
- 1.2 This Response Statement has been prepared in response to the information provided by the Applicant to Deadline 1 (17 April 2023), Deadline 2 (10 May 2023), and the Additional Information (24 April 2023).
- 1.3 This Response Statement builds on the Written Representations submitted on 17 April 2023, to identify those parts of the Pipeline with which we agree, and those parts with which we do not agree and therefore object, taking into account the changes made to the Pipeline and the additional information submitted.
- 1.4 Background information on Peel NRE and their interests is provided within Peel's Written Representations (17 April 2023) and is not repeated in this Response Statement. This Response should be read in conjunction with the Written Representations (17 April 2023).
- 1.5 Peel is wholly **supportive** of the principle of the Pipeline. Indeed, Peel NRE recognises that there are potential beneficial synergies between the Pipeline and Protos<sup>1</sup>. However, should the Order be granted as proposed, the Pipeline will conflict with planned development at Protos which would prejudice the delivery of a key development within the Cheshire West and Chester Council ("CWACC") area and limit its great potential. The **key issues** presented in this Response Statement, and to which **objections** are raised, include:
  - Layout of the Ince Above Ground Installation (AGI).
  - Means of access to the Ince AGI and CO2 Pipeline.
  - Environmental considerations.
  - Easement of the CO2 Pipeline at Ince.
  - Negotiating land agreements.

## Structure of Response Statement

- 1.6 This report is structured as follows:
  - Section 2: Sets out Peel's objections to the Pipeline.

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<sup>1</sup> Protos is a major energy and resource recovery hub and a major employer near to Ince, Cheshire. Peel NRE has been working closely with Cheshire West and Chester Council to deliver the various components of Protos.

- Section 3: Protective Provisions.
- Section 4: Sets out how Peel's objections could be withdrawn.

## 2. Objections

- 2.1 Peel NRE is a supporting organisation of HyNet and remains wholly **supportive** of the principle of the Pipeline. Indeed, Peel NRE recognises that there are potential beneficial synergies between the Pipeline, HyNet and Protos.
- 2.2 Peel NRE has been working with the Applicant to resolve the objections presented in the Written Representations (17 April 2023), however the Parties (Peel NRE and the Applicant) have not yet managed to reach agreement on some matters (as listed at paragraph 1.5). Those matters that are agreed (to date) are set out in the Statement of Common Ground (SoCG) submitted by the Applicant. Until satisfactory agreement has been reached with the Applicant on all matters to resolve Peel NRE's concerns, Peel NRE maintains its objection and must continue to reserve the right to make further submissions to the Examination.

### Layout of the Ince Above Ground Installation

- 2.3 There are no concerns with the principle of the Ince AGI element or its general location, however Peel NRE **objects** to the proposed layout of the Ince AGI.
- 2.4 It is noted within the Planning Statement for the Application (ref. D.5.4, para 5.3.31) that the Applicant states the location of the Ince AGI has been agreed with Peel NRE. Whilst the general location is agreed, the layout is not agreed.
- 2.5 The Ince AGI is located within the Green Belt, open countryside, flood risk area, and a local wildlife site. The layout needs to be carefully considered to not conflict with existing site constraints.
- 2.6 It is understood the Order will be granted to the Works Plans (ref. EN070007-D.2.4-WP-Sheet 1 Rev D) submitted at DL2, and the final precise layout of the Ince AGI will be within the limits of the Order. No Environmental Mitigation Areas are defined on the Works Plans (D.2.4-WP-Sheet 1 Rev D). Notwithstanding this, the Ince AGI Landscape Layout (ref. D.2.14-LAY-Sheet 2 Rev B) identifies the location for landscaping/ecological mitigation and a drainage detention pond, and these remain unchanged from the previous iteration (Rev A). The current location of such features has the possibility to constrain future planned development across the Affected Land. Peel NRE accordingly objects to the current proposed layout of the Ince AGI. The precise location of the Ince AGI and mitigation features should be agreed with Peel NRE.
- 2.7 Peel NRE is liaising with the Applicant to agree terms for a private agreement to regulate how works in proximity to Protos are undertaken and to govern agreement as to the precise location of the Ince AGI to ensure that Protos can continue to come forward and is not compromised by the DCO.

### Green Belt

- 2.8 The Planning Statement (ref. D.5.4 Planning Statement) correctly identifies the Ince AGI is located within the Green Belt. The National Planning Policy Framework (NPPF) is clear that inappropriate development within the Green Belt is, by definition, harmful

and should not be approved except in Very Special Circumstances (VSC) (NPPF para 147). VSC will not exist unless the harm to the Green Belt, and any other harm, is outweighed by other considerations (NPPF para 148).

- 2.9 It is agreed the Ince AGI is inappropriate development and is therefore harmful to the Green Belt (by definition). Peel NRE agrees with the Applicant's case presented in the Planning Statement (ref. D.5.4) that the harm to the Green Belt is outweighed by VSC including the locational need of the Ince AGI and the benefits that will arise as a result of the Project as a whole, including contributing to the UKs commitment to achieve net zero by 2050, the urgent need for carbon reduction infrastructure, and contribution to the overall reduction in greenhouse gas emissions. "Other harms" are presented in the Planning Statement, however, an understanding of the balance of the "other harms" resulting from the proposal against the definitional harm to the Green Belt is not clear from the information submitted to the Examination to date.

### **Open Countryside**

- 2.10 The site of the Ince AGI is located within the 'countryside' as defined by CWACC Local Plan (Part 1) Strategic Policies. Policy STRAT9 applies which seeks to protect the character and beauty of the countryside by restricting development to that which requires a countryside location and cannot be accommodated within the identified settlements.
- 2.11 Whilst the Planning Statement for the Application does not specifically address the 'countryside' element of Policy STRAT 9 (instead focusing the analysis on Green Belt), it is our opinion the same case made for the VSC case can also be applied for the need to locate the proposal within the countryside, and that any harm to the countryside is outweighed by the benefits of the scheme including contributing to the UKs commitment to achieve net zero by 2050, the urgent need for carbon reduction infrastructure, and contribution to the overall reduction in greenhouse gas emissions.

### **Flood Risk Zone and Drainage**

- 2.12 The site of the Ince AGI is located within a 'flood risk zone' as defined by CWACC Local Plan (Part 1) Strategic Policies. Policy ENV 1 applies which seeks to reduce flood risk. The Environment Agency flood risk maps identifies the site as being within an area at 'low' risk of flooding.
- 2.13 A Flood Risk Assessment supports the Application which confirms the Ince AGI will be served by a drainage system which will accommodate for the effects of flooding and climate change.
- 2.14 Additionally, the layout of the Ince AGI (as shown on plan ref. EN070007-D.2.10-LAY-Sheet 1 Rev B) orientates the infrastructure to the northwest, adjacent to an existing drain which travels in an east/west direction to the north of the Ince AGI (East Central Drain) (an Environment Agency "main drain"). The Applicant has confirmed that the location of the Ince AGI and associated surface water drainage infrastructure is 8m from the main drain. This infrastructure also needs to incorporate sufficient space for future planned infrastructure within this area and be located to avoid conflict with future development ambitions. On this basis, relocation of the infrastructure to the

east of the Ince AGI should be considered. The surface water treatment will also need to be agreed with the consenting authority.

- 2.15 It is also understood that temporary drainage systems and other temporary works to watercourses are proposed (including temporary diversion channels) to facilitate construction. The requirements and extents of such works for the construction access roads to the Ince AGI are not set out in full. These should be discussed and agreed with Peel NRE to ensure that these do not conflict with future development ambitions.
- 2.16 Peel NRE accordingly **objects in principle** to the current proposed layout of the Ince AGI and is in the process of discussing matters with the Applicant to agree a position acceptable to both parties. The precise location of the Ince AGI and other infrastructure should be agreed with Peel NRE.

### Local Wildlife Site

- 2.17 The site of the Ince AGI is located within a 'Local Wildlife Site'. Local Plan (Part 1) Strategic Policy ENV 4 applies which seeks to safeguard and enhance biodiversity. The policy requires 'no net loss' of natural assets. However, there is an emerging requirement for developments to achieve 10% biodiversity net gain. Whilst this requirement is not yet mandatory it is fast becoming the expectation for developments to achieve this figure. It is understood that a 1% net gain is currently anticipated, with further mitigation land for Biodiversity Net Gain is under consideration by the Applicant which will be reported on later in the examination process.
- 2.18 Additionally, the layout of the Ince AGI (as shown on plan ref. EN070007-D.2.10-LAY-Sheet 1 Rev B) orientates the infrastructure adjacent to an existing drain which travels in an east/west direction to the north of the Ince AGI (East Central Drain). This drain is known for the presence of Water Voles and mitigation is proposed to ameliorate the impacts on these species (see 'Environmental Considerations' below). However, the location of landscaping is not fixed at this stage. This will need to be discussed further with Peel NRE to ensure that this does not prejudice future development ambitions.
- 2.19 Peel NRE accordingly **objects in principle** to the current proposed layout of the Ince AGI and is in the process of discussing matters with the Applicant to agree a position acceptable to both parties. The precise location of the Ince AGI should be agreed with Peel NRE.

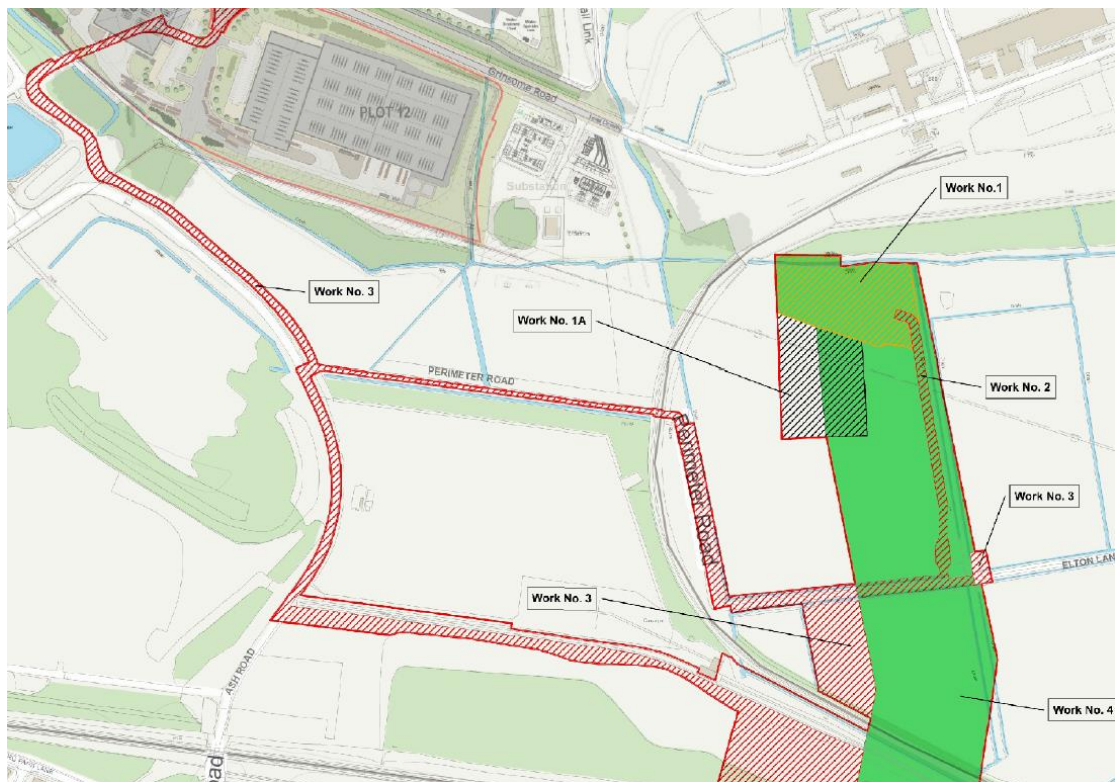
### Access

- 2.20 The proposed access has been updated by the Applicant to include Grinsome Road (as shown on Works Plan ref. EN070007-D.2.4-WP-Sheet 1). Additionally, the Applicant's response to the ExA Q1 (Q1.17.3) states they have identified and assessed two routes for use which will mitigate the impact of the construction of the DCO Proposed Development and will not compromise the delivery of the approved Protos Plastics Park.
- 2.21 The updates provided by the Applicant do not address the objections previously raised by Peel NRE and continues to conflict with the delivery of the approved Protos Plastics Park (CWACC Planning application ref. 21/04076/FUL), and the delivery of the railway

line consented as part of the overarching planning permission for Protos (ref. 14/02277/S73), which would constrain the delivery of the developments. Therefore, at this stage, Peel NRE **objects** to the proposed access (as shown on Works Plan ref. EN070007-D.2.4-WP-Sheet 1).

- 2.22 A plan of the approved Plastics Park masterplan (ref. 20039-FRA-XX-00-DR-A-90-0005 P2) is provided with an overlay of the proposed access route to the Ince AGI and pipeline (shown on plan ref. EN070007-D.2.4-WP-Sheet 1). This is provided at Figure 1 (and at Appendix 16 to the Written Representations (17 April 2023)). This overlay plan clearly shows the conflict of the Applicant's proposed access with the planned development of the Plastics Park at Protos.

**Figure 1: Proposed Access Conflict**



- 2.23 Protos is identified in CWACCs adopted Local Plan as a key strategic site for economic growth and safeguards the land for a multi-modal resource recovery park and energy from waste facility for use in connection with the recycling, recovery and reprocessing of waste materials (Local Plan Part One Policies STRAT 4 and ENV 8; and Local Plan Part Two Policy EP6). As noted in the Written Representations (17 April 2023), the access to the Ince AGI as proposed in the Application would constrain the delivery of a key strategic site in CWACCs Local Plan.
- 2.24 An alternative means of access should be identified by the Applicant to avoid conflicting with planned development at Protos, and avoid conflicting with the strategic ambitions established by CWACC in their adopted Local Plan; or negotiations should continue with Peel NRE as part of the property terms to reach agreement on the access arrangement, as set out in the SoCG.



- 2.25 It is also noted that construction traffic routes to the Ince AGI would include Ash Road and Grinsome Road via Pool Road, with measures to mitigate effects comprising advanced hazard warning signage along Ash Road is proposed (as set out in the Outline Construction Traffic Management Plan, Annex A, Rev C). Based on revisions to programme (with the inclusion of Saturday morning working), it is anticipated that there will be less than 110 Light Good Vehicles (LGVs) and 30 Heavy Good Vehicles (HGVs) on the road network over a day (Environmental Statement Addendum Change Request 1, Appendix A). Further engagement with Peel NRE should be undertaken on the interaction with vehicles (including HGVs and Abnormal Loads) along these routes with measures to reduce delays / restrictions and engagement with Peel NRE and operators to minimise disruption from these vehicle movements.
- 2.26 At this stage Peel NRE **objects in principle** to the proposed means of access. An alternative means of access should be identified by the Applicant to avoid conflicting with planned development at Protos, and avoid conflicting with the strategic ambitions established by CWACC in their adopted Local Plan; or negotiations should continue with Peel NRE as part of the property terms to reach agreement on the access arrangement, as set out in the SoCG.

## **Environmental Considerations**

### **Odour Impacts**

- 2.27 The Applicant has identified the potential for odour emissions at the Ince AGI, with associated Odour Zone, which lies close to Protos (shown on Figure 6.3, Rev B).
- 2.28 Within the Written Representations (17 April 2023), Peel NRE raised concerns over the assessment of odour as presented given proximity to commercial and industrial uses and the need to duly consider such receptors as part of the assessment. It was also noted that such emissions (and associated impacts) can be mitigated through the adoption of an appropriate odour management regime, secured as an odour management plan.
- 2.29 An Outline Odour Management Plan has been submitted (as Appendix 5 of the Outline Construction Environmental Management Plan, Rev A), which sets out mitigation in terms of engagement with the local community and places of work and timing of venting (during stable conditions).
- 2.30 On this basis of this information, Peel NRE is now satisfied that these matters are addressed and this will be confirmed through the SoCG.

### **Location and Extents of Ecological Mitigation**

- 2.31 With relevance to the Ince AGI, no Environmental Mitigation Areas are defined on the Works Plans (D.2.4-WP-Sheet 1 Rev B). However, ecological mitigation measures are proposed include an area of riparian habitat enhancement along the southern bank of East Central Drain as well as the planting of native triple staggered hedgerow, hedgerow, trees, native shrub planting and species rich grassland around the Ince AGI (D.2.14-LAY-Sheet 2 Rev B). Whilst the need to maintain flexibility at this stage is

understood, the location and extent of these works should be discussed with Peel NRE to ensure that these do not prejudice future development ambitions.

- 2.32 It is recognised that additional opportunities for biodiversity enhancement are being considered by the Applicant to achieve at least 1% gain in Priority Habitats, including refining / reducing the extent of proposed temporary impacts and delivery of further habitats. This remains the position outlined in the Draft Biodiversity Net Gain (BNG) Strategy Update (Rev A).
- 2.33 Any further mitigation land requirements identified should be clearly defined and discussed and agreed with Peel NRE if located at Ince AGI to ensure that these do not prejudice development aspirations.
- 2.34 Peel NRE therefore **objects** on the basis that the currently proposed mitigation measures are not fully fixed and agreed and further mitigation requirements are unknown at this stage.
- 2.35 Within the Written Representations (17 April 2023), Peel NRE also raised concerns in regard to the outstanding ecological survey information and potential additional mitigation requirements. A suite of updated reports have been submitted by the Applicant (specifically the Riparian Mammals Survey Report (Appendix 9.6 Rev C)). Following a review of these documents it is agreed that this corroborates the baseline conditions, impact assessment and mitigation identified within Chapter 9 – Biodiversity. Therefore, Peel NRE are now satisfied that these matters are addressed and this will be confirmed through the SoCG.

#### **Impacts on Development Land and Businesses**

- 2.36 As part of Chapter 16: Population and Human Health, effects on ‘development and land and businesses’ have been ‘scoped into’ the EIA. As part of this assessment, it is acknowledged that the Newbuild Infrastructure Boundary lies in proximity to Protos and effects on the strategic employment site are concluded to be ‘Minor Adverse (Not Significant)’ following mitigation.
- 2.37 Within the Written Representations (17 April 2023), Peel NRE raised concerns over the criteria adopted within the assessment and whether all impacts on Protos as a strategic allocation had been fully assessed within Chapter 16: Population and Human Health. Through further discussions this has been confirmed with the Applicant. Therefore, Peel NRE are now satisfied that these matters are addressed and this will be confirmed through the SoCG. Further discussions in respect to access and land acquisition are being progressed with the Applicant.
- 2.38 Within the Written Representations (17 April 2023), Peel NRE also sought clarity on whether the Pipeline would be classified as a Major Accident Hazard Pipeline by the Pipeline Safety Regulations 1996 and therefore ‘generate’ a Consultation Zone with associated land use restrictions. There are a number of other pieces of legislation noted within Chapter 13: Major Accidents and Disasters (e.g. The Planning (Hazardous Substances) Regulations 2015 and The Dangerous Substances and Explosive Atmospheres Regulations 2002). The Applicant has subsequently confirmed that currently the HSE have not classified the proposal under the legislation noted above.

However, there remains a potential for this to be case – dependent on forthcoming HSE advice - and therefore Consultation Zone separation or ‘stand-off’ distances may be applied. Such additional land use restrictions also have the potential to prejudice currently consented and future development ambitions at Protos.

- 2.39 Given this, Peel NRE maintains this **objection** on the basis that there remain potential impacts and mitigation requirements that are not understood at this stage.

#### **Assessment of Cumulative Effects**

- 2.40 An assessment of cumulative effects is provided within Chapter 19: Combined and Cumulative Effects. This covers cumulative effects in terms of multiple, different effects to receptors caused by the Pipeline (intra-project) and in combination with any other developments/projects in the vicinity (inter-project). These types of assessment ensure that the requirements to consider cumulative effects pursuant to the Infrastructure Planning (EIA) Regulations 2017 (as amended) are met for the DCO application.
- 2.41 To identify relevant projects for the assessment of inter-project effects, a series of search criteria have been used (Chapter 19, Paragraph 19.5.14). Based on the search undertaken three projects have been identified within Protos (Appendix 19.1 (Table 2) and Figure 19.1), comprising:
- ID 1e(iii) - TCPA – CWACC: 19/03489/FUL Development of a hydrogen production plant (HPP) and electricity generating plant, comprising of a waste reception and handling building, gasification facility, hydrogen production facility with associated/ ancillary infrastructure which includes access roads, weighbridge, fencing / gates, lighting, surface water drainage, and electricity distribution plant<sup>2</sup>;
  - ID 54 TCPA - CWACC Reference: 21/04076/FUL: Materials recycling facility, two plastics recycling facilities, a polymer laminate recycling facility and a hydrogen refuelling station (Protos Plastics Village); and
  - ID 63 TCPA - CWACC Reference: 20/04396/FUL: Resource recovery facility (Plastics Recycling Facility).
- 2.42 Whilst these Other Developments have been considered, there are a number of other extant permissions which have not yet been implemented or are under construction as of Spring 2023 which lie within the land owned by Peel at Protos. These are outlined in **Appendix 2**. The location of these developments is provided at **Appendix 4**, and layout plans at Appendices 5 – 15.
- 2.43 Due to the proximity and scale of these developments and potential for intra-project effects due to the presence of common sensitive environmental receptors (specifically in respect to landscape and visual, air quality, traffic and transport and biodiversity), Peel NRE **objects** to the current scope and contents of the cumulative assessment. It is

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<sup>2</sup> It is noted that a Section 73 application was submitted in relation to 1e(ii) (CWACC reference 21/02848/S73) which has been consented.

understood that an updated cumulative assessment will be prepared as part of an update ES during the examination.

### Other Environmental Matters

2.44 Within Peel NRE's Responses to ExA's First Written Questions (17 April 2023), a number of other environmental considerations were raised. Based on the subsequent information / responses provided by the Applicant, Peel NRE is satisfied that these matters are addressed and this will be confirmed through the SoCG. These considerations are summarised as follows:

- Climate change, in respect to the methodology and assumptions adopted to calculate greenhouse gas emissions arising from manifold venting;
- Dewatering, with impacts to be controlled through the preparation of a Surface Water Management and Monitoring Plan to be discussed with Peel NRE as landowner;
- Land contamination, in regard to the implementation of measures to mitigate impacts; and
- Lighting, in respect to the implementation of mitigation to minimise disturbance to wildlife during construction and operation.

### Easement of the CO2 Pipeline Corridor

2.45 The pipeline corridor is proposed to travel north/south along the eastern boundary of the Order limit. The location of the pipeline corridor in the current proposal is an improvement on the location of the pipeline previously proposed in the Section 42 Consultation. However, despite this improvement, the current proposals are still not acceptable to Peel NRE on the basis that the proposed 24.4m corridor around the pipeline for the permanent acquisition of sub-soil (at plots 1-11, 1-12, 1-13, 1-15, 1-18 and 1-19) would cause an unacceptable quantum of land to be restricted from development by way of the proposed restrictive covenants.

2.46 Notwithstanding Peel NRE's objection on this matter, the Applicant has confirmed that the 24.4m easement corridor and associated restrictive covenants proposed to be involved are necessary for the protection of the pipeline. The Parties are currently in discussions to reach an agreed position on this matter but the position has yet to be agreed and so Peel NRE must maintain its **objection in principle** to the current proposal on the basis that the restrictive covenants to be imposed on this land will unacceptably constrain the development of the Protos Plastics Park.

### Negotiating Land Agreements

2.47 The parties have yet to agree a position on the land agreements however progress has been made in regards to the Heads of Terms. However, at this stage, Peel NRE must maintain its **objection** to the proposed acquisition of land, interests and rights identified within the Land Plans (drawing ref. EN070007-D.2.2-LP-Sheet 1).

### 3. Protective Provisions

- 3.1 Peel NRE requests that its protective provisions (a copy of which is appended) **(Protective Provisions)** are included in the Order to ensure that its land interests and the planned development of the Protos Plastics Park are sufficiently protected in the carrying out of the authorised development and to ensure that Peel NRE is appropriately consulted at the detailed design stage in respect of the elements of the proposed Order which interface with the Protos Plastics Park.
- 3.2 Peel NRE is in discussions with the Applicant and hopes to seek the agreement of the content of the Protective Provisions with the Applicant prior to the close of the Examination Period. In the event that agreement on the form of Protective Provisions cannot be reached between Peel NRE and the Applicant, Peel NRE would request that the Protective Provisions in the form appended are included in Schedule 10 of the Order in order to afford Peel NRE the appropriate protection in light of the impacts of the proposed Order on its land interests in the Protos Plastics Park.

## 4. Withdrawal of Objections

4.1 In order for Peel NRE to be in a position to withdraw its objection to the proposed Order, Peel NRE requires confirmation from the Applicant that:

- the access to the Ince AGI is relocated or renegotiated to avoid conflicting with planned development at Protos.
- the acquisition of land and rights over the Affected Land (including the extinguishment of any rights) is on terms agreed with Peel NRE.
- sufficient protection for the Protos expansion is afforded by the Pipeline scheme to enable the Protos expansion to come forward unhindered.
- no works pertinent to the Affected Land shall be carried out without Peel NRE's prior approval of the plans, specification, method statement and programme of works.
- full access rights, during both the construction and operation phases, are retained to the Affected Land for the benefit of Peel NRE.
- reconsideration of the location of drainage infrastructure to avoid conflicting with planned development at Protos.
- clarification on any additional further ecological mitigation requirements at Ince AGI due to BNG.
- clarification on hazards posed by the Pipeline (noting that this is subject to HSE advice).
- updated cumulative assessment, fully considering intra-project effects with consented development within Protos.
- the proposed Protective Provisions are agreed.

## **Appendix 1: Draft Protective Provisions**

**Turley Office**  
1 New York Street  
Manchester  
M1 4HD

T 0161 233 7676

**Turley**



PROTECTIVE PROVISIONS

PART [    ]

FOR THE PROTECTION OF PEEL NRE LIMITED

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Peel and, in the case of paragraph 15 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"Peel" means Peel NRE Limited (company number 04480419, whose registered office is at Venus Building, 1 Old Park Lane, Traffordcity, Manchester, M41 7HA and any associated company of Peel NRE Limited which holds property

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of relevant property;

"relevant property" means:

- (a) any land, works, apparatus and equipment belonging to Peel; and
- (b) any easement or other property interest held or used by Peel or a tenant or licensee of Peel for the purposes of such land, works, apparatus or equipment;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, relevant property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

3. (1) The undertaker must not exercise the powers conferred by—

- (a) article 3 (*development consent etc. granted by the Order*);
- (b) article 5 (*power to maintain the authorised development*);
- (c) article 19 (*discharge of water*);

- (d) article 20 (*maintenance of drainage works*);
- (e) article 21 (*authority to survey and investigate the land*);
- (f) article 22 (*protective work to buildings*);
- (g) article 23 (*removal of human remains*);
- (h) article 24 (*compulsory acquisition of land*);
- (i) article 26 (*compulsory acquisition of rights and restrictive covenants*);
- (j) article 27 (*statutory authority to override easements and other rights*);
- (k) article 29 (*private rights*);
- (l) article 31 (*acquisition of subsoil or airspace only*);
- (m) article 34 (*temporary use of land for carrying out the authorised development*);
- (n) article 35 (*temporary use of land for maintaining the authorised development*);
- (o) article 36 (*statutory undertakers*);
- (p) article 39 (*felling or lopping of trees and removal of hedgerows*);
- (q) article 40 (*trees subject to tree preservation orders*);
- (r) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (s) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (t) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (u) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any relevant property unless the exercise of such powers is with the consent of Peel.

(2) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 41 (*statutory undertakers*), article 29 (*power to override easements and other rights or private rights of way*) or article 27 (*private rights over land*), in relation to any right of access of Peel to relevant property, but such right of access may be diverted with the consent of Peel.

(3) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any relevant property, or extinguish any existing rights of Peel in respect of any third party property, except with the consent of Peel.

(4) Where Peel is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

4. (1) The undertaker must before commencing construction of any specified work supply to Peel proper and sufficient plans of that work for the reasonable approval of Peel and the specified work must not be commenced except in accordance with such plans as have been approved in writing by Peel or settled by arbitration under article [x] (arbitration).  
  
(2) The approval of Peel under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Peel and Peel has not intimated their disapproval together with the grounds of any such disapproval of those plans, Peel will be deemed to have approved the plans as submitted.
5. (1) Any specified work must, when commenced, be constructed—
  - (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 4;
  - (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of Peel;
  - (c) in such manner as to cause as little damage as is possible to relevant property; and  
(2) If any damage to relevant property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage. and must pay to Peel all reasonable expenses to which Peel may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.  
  
(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Peel or its servants, contractors or agents or any liability on Peel with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.
6. (1) The undertaker must pay to Peel all reasonable and proper costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Peel —
  - (a) by reason of the construction, maintenance or operation of a specified work or the failure of such a work; or
  - (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
  - (c) in respect of any damage caused to or additional maintenance required to relevant property.

and the undertaker must indemnify and keep indemnified Peel from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.

(2) Peel must –

(a) give the undertaker reasonable written notice of any such sums referred to in sub-paragraph (1) as soon as reasonably possible after Peel become aware of the same

(b) not make any without the prior consent of the undertaker; and

(c) take all reasonable steps to mitigate any liabilities; and

(d) keep the undertaker informed and have regard to the undertaker's representations in relation to any such sums referred to in sub-paragraph (1).