

Appendix A - Written Summary of the Canal & River Trust's (the Trust) Oral Submissions made at the Compulsory Acquisition Hearing 1 (CAH1) held on 7 June 2023

1. The Trust raises no objection to the principle of the Applicant obtaining a long lease the necessary subsoil to lay the pipeline (Plot 8-03) or a licence permitting the temporary possession of part of the canal bank adjacent to the A41 (Plot 9-06). The Trust recognises that a crossing beneath the canal is necessary, and that the length of canal within the Order Limits is proportionate. The Applicant acknowledges that has reduced the width of Plot 8-03 following the Trust's DL1 response.
2. However the Trust maintains an important objection to the inclusion of compulsory acquisition powers in respect of Plots 8-03 and Plot 9-06 with regard to the extent to which the Applicant can demonstrate a compelling case to include compulsory acquisition provisions. Specifically, paragraph 25 of the September 2013 'Guidance related to procedures for the compulsory acquisition of land' confirms as follows:

Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.
3. Although the Applicant and the Trust have begun some discussions over the terms of the long lease and accesses licence, and indeed revised Heads of Terms were received by the Trust on 5 June 2023 (on the eve of the compulsory acquisition hearing), the Trust considers that meaningful attempts to acquire land by negotiation have not yet been made by the Applicant, and that negotiations cannot be said to have failed.
4. The point not just as a matter of principle. Having its land acquired compulsorily rather than by way of agreement has significant practical consequences for the Trust.
5. The Trust is both a statutory undertaker and also a registered charity, and as a consequence has significant internal and external reporting requirements for disposal of land or rights, and which are made materially more difficult if such reporting is undertaken 'after the event', for example following the making of a general vesting declaration.
6. The valuation of rights / land acquired is complex for canal assets, and in cases where only the subsoil if to be acquired is comparatively low value compared with (say) developed or developable land. While ensuring fair and best value for any disposal of land or rights is essential to the Trust, of equal importance is the need to protect Trust assets within the terms of the relevant lease / licence. The Trust is experienced in negotiating and securing such protections in appropriate legal documents, and which are not achieved where land or rights are acquired through a GVD.
7. The Trust has unfortunately experienced a recent example of negotiations in respect of a voluntary agreement not being prioritised by a promotor during the DCO examination process, despite heads of terms being substantially agreed. The Order was then made prior to the agreement being completed, and the promoter subsequently then ended negotiations and proceeded to acquire the necessary rights via the making of a GVD. This process resulted in abortive costs and significant wasted personnel time on the part of the Trust.

8. The Trust's suggested solution - in the event that the long lease and temporary possession licence are not agreed with the Applicant prior to the making of the Order - is to include within the Trust's protective provisions in Schedule 10 (which remain under discussion between the Applicant and the Trust) a provision which makes the Applicant's compulsory acquisition powers subject to the Trust's reasonable consent. Similar provisions are already contained within the draft Order in respect of electricity, gas, water and sewerage undertakers (see Sch 10, paragraph 4), National Grid (Electricity) (see Sch 10, paragraph 19), and National Grid (Gas) (see Sch 10, paragraph 33).
9. In those circumstances the Trust would be subject to the requirement to act reasonably, and in the event the Applicant considered otherwise the matter could be dealt with under the Order's arbitration provisions.