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9.71 Applicants Response to Rule 17 Letter – Statutory Undertakers and Protective Provisions

Document Reference: EN070008/EXAM/9.71

Applicant: Chrysaor Production (U.K.) Limited,
a Harbour Energy Company
PINS Reference: EN070008
Planning Act 2008 (as amended)
The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 - Regulation 5(2)(q)
Date: September 2024

Harbour Energy

AECOM

The Applicant's Response to Rule 17 letter - Statutory Undertakers and Protective Provisions

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1 INTRODUCTION

1.1 The Applicant has prepared this submission in response to the request for further information by the Examining Authority dated 6 September 2024 (the "Rule 17 letter"). The Rule 17 letter requested that the following information from the Applicant:

> <u>*Protective Provisions*</u>
>
> ***Applicant*** *– a number of Statutory Undertakers (SU) provided comments at Deadline 5 suggesting that certain Protective Provisions were not being included in the draft Development Consent Order (DCO). These same SU's are registered as having outstanding objections on the Compulsory Acquisition Tracker. The SU's have helpfully provided 'insert' text for the ExA and the Secretary of State (SoS) to consider. If you are not accepting the insert text and if you are not amending the Protective Provisions to accommodate the SU's requests, provide rationale behind this including why such provisions would prejudice the Proposed Development or represent an impediment to its delivery.*

1.2 This submission addresses specific comments raised by parties at Deadline 5 and also includes comment on other protective provisions where the Applicant has not reached full agreement with the relevant Statutory Undertaker. This submission sets out why the Applicant considers that the protective provisions included within the draft DCO (Revision H) (document reference 2.1) for the benefit of relevant Statutory Undertakers provide the necessary protection to their undertaking to satisfy the requirements of the Planning Act 2008.

2 BACKGROUND AND LEGISLATIVE CONTEXT

2.1 The draft DCO (Revision H) (document reference 2.1) includes powers to acquire land and rights in land on a permanent and temporary basis. In the event it has not been possible to acquire the land rights and interests by agreement, it will be necessary to compulsorily acquire these for the purposes of developing the Proposed Development.

2.2 As set out in the Book of Reference, compulsory acquisition powers are sought over a number of plots in which statutory undertakers have an interest. As set out in section 9.2 of the Statement of Reasons [AS-069], the Applicant seeks the necessary powers to acquire all estates and interests in the subsurface in which the pipeline would lie, together with a 'layer' of additional subsurface land around the pipeline itself to form a protective barrier. The proposed width of the subsurface acquisition is a maximum of 8m. Rights are sought by the applicant to lay down, construct, install, adjust, alter, test, use, maintain, repair, renew, upgrade, inspect, survey, cleanse, re-lay, divert, make safe, make incapable of operation, replace and remove the pipeline. Restrictive covenants will be imposed over the pipeline corridor to provide protection to pipeline once it is installed. These would prevent buildings or other erections being built over the pipeline.

2.3 The precise location of the pipeline, its associated subsurface land take and acquisition of new surface rights will depend on its route alignment within the corridor of land shown shaded orange on the Land Plans (Revision D) [REP5-011]. Within the Order Limits, there are a number of statutory undertakers that have installed apparatus and/or have rights in land. The protective provisions included within the draft DCO (Revision H) for the benefit of statutory undertakers seeks to manage the interaction between the Proposed Development and the apparatus/rights of statutory undertakers.

<u>Serious Detriment test</u>

2.4 Section 127 of the Planning Act 2008 states:

> ***127 Statutory undertakers' land***
>
> *(1)This section applies in relation to land ("statutory undertakers' land") if—*

(a)the land has been acquired by statutory undertakers for the purposes of their undertaking,

(b)a representation has been made about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn, and

(c)as a result of the representation the Secretary of State is satisfied that—

(i)the land is used for the purposes of carrying on the statutory undertakers' undertaking, or

(ii)an interest in the land is held for those purposes.

(2)An order granting development consent may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (3).

(3)The matters are that the nature and situation of the land are such that—

(a)it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or

(b)if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.

(4)Subsections (2) and (3) do not apply in a case within subsection (5).

(5)An order granting development consent may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right over land only to the extent that the Secretary of State is satisfied of the matters set out in subsection (6).

(6)The matters are that the nature and situation of the land are such that—

(a)the right can be purchased without serious detriment to the carrying on of the undertaking, or

(b)any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

(7). . . . .

(8)In this section—

"statutory undertakers" has the meaning given by section 8 of the Acquisition of Land Act 1981 (c. 67) and also includes the undertakers—

(a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;

(b)which are statutory undertakers for the purposes of section 1 6(1) and (2) of that Act (see section 16(3) of that Act).

(9)In the application of this section to a statutory undertaker which is a health service body (as defined in section 60(7) of the National Health Service and Community Care Act 1990 (c. 19)), references to land acquired or available for acquisition by the statutory undertakers are to be construed as references to land

acquired or available for acquisition by the Secretary of State for use or occupation by the body.

2.5 The Applicant considers that the provisions in section 127 are engaged for the following parties as (i) they are statutory undertakers for the purposes of the Planning Act 2008, (ii) land has been acquired by that undertaker for the purpose of its undertaking (s127(1)(a)), (iii) a representation has been submitted in respect of the DCO application and has not been withdrawn (s127(1)(b)):

(a) National Grid Electricity Transmission plc

(b) National Gas Transmission plc

(c) Cadent Gas Limited

(d) Network Rail Limited

(e) National Highways

(f) Associated Petroleum Terminals and Humber Oil Terminals Trustee Limited (referred to together as "the IOT Operators")

(g) Uniper UK Limited

2.6 The Secretary of State will then need to consider the provisions of subsections (3) – (6) and whether the land or rights in land sought by the Applicant can be acquired without 'serious detriment' to the carrying on of the undertaking.

2.7 It is clear from previous considerations of section 127 in DCO decisions that what constitutes 'serious detriment' is a high bar. Just because there is any adverse impact or detriment will not mean that serious detriment exists. In the Lake Loathing DCO[1] examination, Associated British Ports ("ABP") (the port authority who were a statutory undertaker) argued that the proposals would cause serious detriment to their port undertaking at Port of Lowestoft. The proposals included:

(a) the permanent compulsory acquisition of 3,000m2 of land side and bed of the lake; 2,500m2 of airspace and rights under bridge decks; and

(b) 4,500m2 of rights over the only access to the port.

2.8 ABP argued that the implications of the rights sought under the Lake Loathing DCO were that there would be a loss of 165m of berthing and that the proposals would seriously compromise the operational viability of the port by creating a constraint on the retention of existing and the attraction of new business. This would in turn cause damage to the strategic significance and the economic contribution of the port. ABP submitted therefore that the impact on the Lake Loathing DCO on the Port of Lowestoft amounted to serious detriment.

2.9 The Examining Authority in their recommendation report found that "the Proposed Development would cause material harm to the operational port. However, the extent of this harm, when considered in the context of the port operation as a whole, may be characterised as no more than moderate".[2]

2.10 In the decision letter the Secretary of State concluded that the "effect of the Proposed Development on the operation of the port would not justify refusing development consent".[3] The Secretary of State determined that "in the context of section 127 of the

[1] Planning Inspectorate reference TR010023

[2] Examining Authority Recommendation Report on the Lake Lothing Third Crossing Development Consent Order, paragraph 5.8.156.

[3] Secretary of State Decision Letter on the application for the proposed Lake Lothing Third Crossing Development Consent Order dated 30 April 2020, Paragraph 25.

2008 Act that the CA and [temporary possession] powers sought would be detrimental to the carrying out of ABP's statutory undertaking but this detriment would not be serious".[4]

2.11 Similarly, in the consideration of the Great Yarmouth Third Crossing DCO[5] the Examining Authority also had to consider the impact of the proposal on an operational Port. In that case the ExA accepted that 5 of 97 berths in the river would be permanently lost. Despite that, the ExA was "satisfied that the Scheme would not have a significant detrimental impact on Port capacity".[6] Further while the construction of a new bridge would result in some "unavoidable inconvenience"[7] that would not result in serious detriment to local Port businesses. The ExA concluded that the inconvenience to commercial and recreational river traffic had to be weighed against the scheme benefits and found that "these factors do not weigh heavily against the Scheme".[8] The impacts would be "minor and unavoidable dis-benefits to Port navigation during the construction phase and thereafter to a small number of recreational vessels" and did not amount to serious detriment. The Secretary of State agreed with the ExA and was satisfied that there would be no serious detriment to Port businesses.[9]

2.12 The Applicant notes that there have been various considerations[10] of the interaction between statutory undertakers over whom compulsory acquisition powers are sought in DCOs and the protective provisions which apply to them. In numerous instances it has been decided that some protective provisions are required to prevent the compulsory acquisition powers resulting in serious detriment. That does not however mean that the relevant protective provisions were granted in the form sought by the statutory undertaker or that serious detriment is only avoided where statutory undertakers have agreed such provisions. Rather, it is open to the Secretary of State to determine what provisions are appropriate to prevent serious detriment arising.

2.13 A deviation from the protective provisions sought by a statutory undertaker does not need to be justified by the Applicant on the basis that it might be an impediment to the Proposed Development. Rather, it needs to be considered whether the additional provisions sought by the statutory undertaker are necessary to avoid serious detriment to its undertaking.

2.14 For the reasons set out below, the Applicant considers that the protective provisions that it has included within the draft DCO (Revision H) afford a suitable level of protection and that the additional protections sought by the statutory undertaker are unnecessary.

3 NATIONAL GRID ELECTRICITY TRANSMISSION PLC

3.1 National Grid Electricity Transmission plc ("NGET") has land interests and apparatus within the Order Limits. NGET provided its preferred form of protective provisions at Deadline 5 [REP5-081] and summarised its own position on where the differences are between the parties and its comments on the position [REP5-080]. The Applicant's position is set out in Table 1 below.

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[4] Ibid, Paragraph 35
[5] Planning Inspectorate reference TR010043
[6] Examining Authority Recommendation Report on the Great Yarmouth Third River Crossing Development Consent Order, paragraph 4.5.55
[7] Ibid, paragraph 4.5.58
[8] Ibid, paragraph 4.5.59
[9] Secretary of State Decision Letter on the application for the Great Yarmouth Third River Crossing Development Consent Order dated 24 September 2020, Paragraph 26.
[10] The following are given as indicative examples only and are not an exhaustive list: Hinkley Point C Connection Project Development Consent Order, Richborough Connection Development Consent Order, Thurrock Flexible Generation Plant Development Consent Order, M25 Junction 28 Improvement Project Development Consent Order; HyNet Carbon Dioxide Pipeline Order.

Table 1

Paragraph Reference (draft DCO Revision H reference)	Difference between parties	NGET comments	Applicant comments
Future apparatus wording – throughout the PPs	NGET has inserted provisions in respect of the proposed Eastern Green Link 3 and 4 Projects (“EGL3 and 4”) and the proposed Grimsby to Walpole Project which are NSIPs at the pre-application stage (“the Proposed NGET Projects”). The Applicant does not agree to the inclusion of this wording or that wording to protect unbuilt assets should be included in the protective provisions.	NGET are currently developing a number of projects which will play a crucial role in upgrading the UK’s electricity system and in helping the UK meet its net zero and climate change obligations. It is important that these projects can be brought forward. The two projects which NGET is including in these protective provisions (EGL3/4 and Grimsby to Walpole) are both NSIPs which are supported as projects of Critical National Priority by the National Policy Statements. As such NGET feels it is important to include obligations in relation to coordination and cooperation where it is likely that there will be interactions between future apparatus. The wording generally requires cooperation and collaboration between the parties. The coordination between different NSIPs is becoming increasingly important and will need to be grappled with and NGET consider that including this wording in protective provisions will allow there	The Applicant considers that NGET has not justified why the protective provisions should extend to he Proposed NGET Projects, and that these protections are not necessary to prevent serious detriment to NGET’s undertaking. The Planning Inspectorate’s website notes that the Proposed NGET Projects are at the pre-application stage. The applications for EGL3 and 4 are due to be submitted in Summer 2026 A non-statutory consultation took place between 23 April 2024 and 15 July 2024. Similarly the Grimsby to Walpole Project is due to be submitted in Quarter 2 of 2027, and non statutory consultation was undertaken between 18 January 2024 to 13 March 2024. The Applicant notes that the route corridors of the Proposed NGET Projects are broad and include a significant amount of optionality. NGET does not own or have the relevant rights in land within the corridors identified. That land is not

		to be a clear framework for managing such interfaces and ensuring that all projects can be brought forward in an efficient manner. The upgrading of the electricity transmission system is crucial for the UK and also essential to other developers of energy projects to ensure that there are sufficient connection opportunities to help benefits of energy projects be efficiently and effectively realised. Similar wording to that included within the protective provisions has previously been included within the Awel y Mor Offshore Wind Farm DCO.	currently operational for the purpose of their undertaking. The Applicant considers that it is entirely premature for protective provisions to be included in the draft DCO for the Proposed Development when these projects are a significant way from making an application, let alone being realised and commencing construction. The Applicant agrees that if the Proposed NGET Projects are granted consent, then it would be beneficial to have a clear framework for managing interfaces between them and the Proposed Development. However, it disagrees that this should be secured through the draft DCO.
Paragraph 21(2) [Removal of Apparatus]	The difference between the parties is shown by way of tracked changed in the text below. The Applicant's preferred approach is to include 'reasonable' but NGET do not agree to this addition. *"(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the*	NGET cannot agree to the addition of 'reasonable' in this paragraph. NGET has a statutory duty to maintain an efficient, coordinated and economical system of electricity transmission. As part of this, NGET must ensure that the decision on whether any replacement apparatus required to facilitate other projects is reasonable must be at its absolute discretion to maintain the integrity of the electricity transmission system. Further, NGET has a crucial role to play in the decarbonisation of the electricity system and the move towards net zero. In accepting alternative apparatus NGET must ensure that	The Applicant does not consider that including a requirement on NGET to act reasonably imposes the burden suggested by NGET, or would preclude it from complying with its statutory obligations.

	alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its *reasonable* *satisfaction (taking into account paragraph 22(1) below) the necessary facilities and rights."*	they can still meet all statutory obligations and requirements and this cannot be subject to any 'reasonableness' provision. This wording and the requirement for NGET to have absolute discretion on this point has been accepted on many DCOs and we do not consider why there is anything which means that it should not be accepted in this case.	
Paragraph 24 [Expenses], addition of new (6)	The Applicant's preferred protective provisions include a new sub-paragraph (6) which sets out *"Where in accordance with paragraph 24(1) the undertaker pays National Grid in respect of an itemised invoice or claim for charges, costs and expenses reasonably anticipated within the following three months, should there be any unspent funds after the expiry of such three month period, National Grid shall repay such unspent funds within 60 days of the total charges, costs and expenses actually reasonably and properly incurred being known, and include an itemised accounting of the charges, costs and expenses reasonably and properly incurred for the three months following the issue of the itemised invoice or claim."*	The inclusion of this wording is not accepted. In terms of the practicalities, if anticipated costs are incurred this is likely to be associated with either diversionary works or compulsory purchase (which are not anticipated on this scheme) in which case there will be a separate commercial agreement (such as a diversionary works agreement) which will apply and which will regulate expenditure and will be subject to these terms and liaison with many different parts of the business. If there are such works under agreements, these also may take a longer period of time to complete. We run the risk of funds needing to be returned under the drafting when they	The Applicant considers it appropriate that NGET should only claim what it anticipates spending within a forthcoming quarter, and that any unspent funds should be returned once the total costs are known. The Applicant does not consider that this would preclude NGET from retaining any unspent funds that it anticipates spending in the next three-month period in the event there has been a delay in the funds being spent e.g. due to a delay in settlement of commercial negotiations.

	NGET do not agree with the inclusion of this wording.	are still required for works being regulated under agreements entered into between the parties which would create an extra administrative burden for all parties.	

4 NATIONAL GAS TRANSMISSION PLC

Pipelines outside of the former Theddlethorpe Gas Terminal site

4.1 As set out in the Applicant's response to the Examining Authority's second written questions [REP5-062] (Q2.5.19), the Applicant and NGT have agreed terms of a suite of agreements that secure the necessary land rights for the Theddlethorpe Facility and in respect of Protective Provisions for NGT's functions and duties as a statutory undertaker. The Applicant has signed the agreements and awaits confirmation from NGT that it has done the same. The Applicant understands that the agreements are going through NGT's internal approval process, but that completion is due imminently. The Applicant will submit the agreed form Protective Provisions as soon as NGT complete the agreement between the parties. As these provisions have been agreed with NGT, the Applicant considers that they will provide suitable protection to NGT's undertaking.

Former Theddlethorpe Gas Terminal Site

4.2 If the agreement has not completed before the close of the Examination, the Examining Authority will need to consider if section 127 is engaged in respect of the former TGT site. In the event that the Examining Authority disagrees with the Applicant's submissions in [REP4-034] and considers that the TGT site is operational land (which is not accepted), then the Examining Authority would need to consider whether, in terms of s127(3) of the Planning Act 2008, the land could be purchased and not replaced without serious detriment to the carrying on of the undertaking. The Applicant respectfully submits that it can be.

4.3 The former TGT site is not in active use as an operational facility. There are no applications for planning permission or other consent in respect of the site, and no proposals within the planning system at an earlier stage such as scoping or consultation. The Proposed Development will occupy a portion of the wider TGT site, and will not prevent future development of the remainder.

4.4 Furthermore, the Applicant considers that the Proposed Development is consistent with NGT's stated aspirations for a future "energy park" on the site. NGT have not demonstrated that the Proposed Development would prevent a barrier to those aspirations, and indeed engagement has been positive between the Parties in negotiating a legal agreement to secure the necessary land and rights for the Project.

4.5 As set out in section 2, it is clear from previous considerations of section 127 in DCO decisions that what constitutes 'serious detriment' is a high bar. The Applicant submits that the land required for the Proposed Development can be compulsorily required without causing such an impact on NGT's undertaking.

5 CADENT GAS LIMITED

5.1 Cadent Gas Limited ("Cadent") has land interests and apparatus within the Order Limits. Cadent provided its preferred form of Protective Provisions and summarised its own position on where the differences are between the parties at Deadline 5 [REP5-075]. The Applicant's position is set out in Table 2 below.

Table 2

Paragraph Reference	Difference between parties	Cadent's comments	Applicant comments
Removal of apparatus – paragraph 53(3)	The Applicant's preferred form of protective provisions includes an amendment to paragraph 53(3) as set out in track changes below: *"(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent ~~may~~ must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do."*	No specific comments within [REP5-075].	Paragraph 53 (3) of the Applicant's Protective Provisions *Removal of Apparatus* relates to circumstances where the Applicant is unable to locate the prescribed facilities and rights for alternative apparatus (as per 53(2)) then Cadent must, on receipt of written notice assist the undertaker with such steps that are reasonable in the circumstances (save using its compulsory acquisition powers unless it elects to do so). Cadent states that it cannot accept the use of the word "must" in this paragraph (it instead proposes "may") as it has a statutory and regulatory duty to act economically and efficiently and therefore cannot agree to this. The Applicant does not consider it appropriate that this should be entirely at Cadent's discretion, as this could result in an impediment to the Proposed Development coming forward. The Applicant considers that the wording requiring Cadent to take such steps "as are reasonable in the circumstances" would already account for its statutory and regulatory duty. Cadent would be entitled to refuse to do something that

			compromised those functions under the existing wording. The Applicant therefore considers that the wording it has proposed is appropriate, and that the Applicant's preferred form of protective provisions would avoid any serious detriment to Cadent's undertaking.
Indemnity – paragraph 57(3)	The Applicant's preferred form of protective provisions include the following additional sub-paragraph 57(3)(c): *"(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—* *(c) any indirect or consequential loss of Cadent or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) where reasonably foreseeable."*	The indemnity that Cadent is seeking is in substantially the same form as the indemnity included in recent DCOs made by the Secretary of State for Energy Security and Net Zero. See, for example, Paragraph 40 of Part 4 of Schedule 12 to The Sunnica Energy Farm Order 2024 (made on 3 August 2024), Paragraph 105 of Part 8 of Schedule 15 to The Mallard Pass Solar Farm Order 2024 (made on 3 August 2024) and Paragraph 27 of Part 3 of Schedule 11 to The Medworth Energy from Waste Combined Heat and Power Facility Order 2024. 10. Cadent's position is that there is no reason or justification for the Secretary of State to make the DCO without an indemnity or with a form of indemnity which is materially different to that in the recently made DCOs identified in Paragraph 9 above.	The Applicant considers that the restriction that it seeks on liability reflects the default 'at law' position, where it would only be liable for indirect losses of third parties where they were reasonably foreseeable. Having an open-ended indemnity in the form sought by Cadent could impose a far greater burden on the Applicant. The Applicant does not consider this to be necessary to prevent serious detriment to Cadent's undertaking.

6 NETWORK RAIL

6.1 The Applicant understands that Network Rail Limited are agreeable to the Protective Provisions included in the draft DCO (Revision H). The Applicant considers that these are sufficient to avoid any serious detriment to Network Rail's undertaking as a result of the exercise of the compulsory acquisition powers within the draft DCO.

6.2 The Applicant and Network Rail have agreed a 'Framework Agreement' that governs other matters wider than the Protective Provisions and is currently going through the internal approval process of both parties prior to signature. The Applicant expects that this will be completed shortly, at which point it would expect Network Rail to withdraw its objection to the application. National Highways

6.3 National Highways has land interests within the Order Limits, in particular where the Order Limits for the Proposed Development cover the strategic road network. National Highways provided its preferred form of Protective Provisions and summarised its own position on where the differences are between the parties at Deadline 5 [REP5-082]. The Applicant's position is set out in Table 3 below. The Applicant notes that one of the matters identified in National Highways' Deadline 5 response as 'not agreed', being the request for articles 14 and 17 (previously 13 and 16) of the draft DCO to be referenced in the prior approvals provisions, has now been agreed and is reflected in the form of protective provisions included in the draft DCO (Revision H).

Table 3

Paragraph Reference (draft DCO revision H reference)	Difference between parties	National Highways comments	Applicant comments
Paragraph 114 – interpretation – definition of "acceptable security"	National Highways does not accept that providing evidence to its reasonable satisfaction that the undertaker has a tangible net work of not less than £50m is an acceptable form of security.	Agreement has yet to be reached on the provision of adequate security to protect National Highways from any financial liability.	The Applicant considers this to be adequate, and a form of security that is regularly accepted by other statutory undertakers.
Paragraph 117(10) – construction of the specified works	The difference between the parties is shown by way of tracked changed in the text below. The Applicant's preferred provisions do not include the text marked red. *"(10) Powers granted to National Highways to undertake any works under this paragraph include works to make safe an area but do not include powers to undertake any works to the pipeline or any works which could conflict with the duties and obligations of the undertaker under the Pipeline Safety Regulations 1996, any direction issued by the Health and Safety Executive under those Regulations or any other health and safety legislation relating to the operation and maintenance of the pipeline unless any such works are unavoidable due to a requirement to protect the safety of the SRN but in all cases of conflict matters of*	National Highways remains concerned regarding the extent of a restriction the applicant is seeking to impose on it regarding works that may affect the pipeline. Whilst National Highways has no intention of undertaking works to the pipeline, or which may affect it, it cannot accept a provision that may hinder its ability to comply with its own statutory responsibilities and/or impact the safety of its operatives and customers.	The Applicant does not consider that the additional wording is necessary to allow National Highways to undertake words to protect the safety of operatives or users of the SRN. However, the Applicant cannot accept a third party having the ability to undertake works to the pipeline without notifying and agreeing those works with the Applicant. The design and operation of the pipeline will accord with strict health and safety standards. Safety of users of the SRN can be addressed in the short term through a road closure. That then allows time for National Highways to engage with the Applicant on any works that it considers necessary to the pipeline. There is no instance where the Applicant considers it would be necessary for National

	health and safety take precedence and the undertaker and National Highways must work together to ensure that all safety issues are appropriately dealt with.”		Highways to have the power to undertake those works itself.
Paragraph 119(7) – completion of specified works	National Highways seeks to include the following text as a new sub-paragraph 118(7), which is not agreed by the Applicant: *“(7) A defects period shall commence following completion of a specified work during which time the undertaker must, at its own expense, remedy any defects in the SRN as are reasonably required by National Highways. All identified defects must be remedied in accordance with the following timescales—* *a. in respect of matters of urgency, within 24 hours of receiving notification for the same (urgency to be determined at the absolute discretion of National Highways);* *b. in respect of matters which National Highways considers to be serious defects or faults, within 14 days of receiving notification of the same; and* *c. in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification of the same.”*	National Highways' request for the provision of a defects period at paragraph [119] (*Completion of a specified work*) has not been accepted. National Highways' concern in this regard relates to potential settlement induced due to the pipe installation as this potentially could take several months to materialise with inherent damage to National Highways' earthworks and pavement. A defects period is a standard request of National Highways when any third party works take place that could affect the SRN. It would require a developer to remedy any issues that arise within 12 months of works being completed.	The Applicant does not accept that a 'defects' period is necessary to include within the protective provisions. Considerable protections are already included through the need to obtain prior approval of plans and design (para. 116), inspection of the ongoing construction works by National Highways (para. 117) and post-construction surveys (para. 118). The Applicant considers that these protections already provide adequate protection that would avoid serious detriment to National Highways' undertaking as a result of the Proposed Development. The drafting sought by National Highways is broad, and the Applicant's concern is that National Highways seeks to impose liability on it for defects in the SRN that are wholly unrelated to the Proposed Development.

Paragraph 120 - Security	National Highways preferred provisions seek to apply the security provisions until the end of a ‘defects period’.	As above	As above

7 IOT OPERATORS

7.1 Associated Petroleum Terminals and Humber Oil Terminals Trustee Limited (referred to together as "the IOT Operators") have land interests and apparatus within the Order Limits. In particular, the IOT Operators have assets situated in a pipe rack within the Order Limits. The Applicant and the IOT Operators have had productive discussions on the terms of protective provisions and has included protective provisions for the IOT Operators within the draft DCO (Revision H) as Part 12 of Schedule 9. The Applicant considers that the terms of those protective provisions are sufficient to avoid serious detriment to the IOT Operators' undertaking.

7.2 The Applicant notes that there are ongoing discussions on technical matters between the parties that the Applicant does not consider need to be resolved at this stage in the development process, whilst detailed design is still to be undertaken, but acknowledges that the IOT Operators' wish to have this information before they can withdraw their objection. The Applicant is continuing to engage with the IOT Operators to seek to address their remaining concerns and allow their objection to be withdrawn.

8 UNIPER UK LIMITED

8.1 Uniper UK Limited ("Uniper") has land interests and apparatus within the Order Limits. Uniper has provided its preferred form of Protective Provisions. The Applicant considers that these are broadly agreeable, but there are a limited number of points that the Applicant cannot accept as detailed in Table 4 below.

Table 4

Paragraph Reference (in Uniper preferred form PPs)	**Applicant's proposed amendment**	**Applicant's justification**
Paragraph 224(12)	The Applicant considers that the sub-paragraph should be updated as detailed in red below: *"(12) The undertaker must prepare, and keep up-to-date, a complete set of red-lined "as-built" records of the execution of the specified works, showing the exact as-built locations, sizes and details of such works as executed. After completion and once the undertaker is in receipt of and is satisfied with the final versions of the complete "as-built" records, ~~T~~ the undertaker must submit to Uniper, no later than twenty (20) business days thereafter, ~~the completion of the specified works~~ all the "as-built" records. Uniper may*	The 'as built' records for the Proposed Development will not be produced until the scheme as a whole is complete. This is standard practice for a development of this nature and scale. The Applicant would therefore not be able to comply with any requirement to provide 'as-built' drawings for an isolated section of the route at an earlier date, which is what this provision as drafted would require. The Applicant notes that the Uniper preferred form protective provisions relate to the Gate Burton solar farm development. The build out and preparation of drawings for that form of development could be wholly different from those of a circa 55km pipeline.

	specify the number of copies of any "as built" records acting reasonably."	The Applicant considers that the other notification requirements prior to construction in paragraph 224 already provide adequate notice to Uniper of where works will be undertaken and where the pipeline is likely to be situated, should Uniper require to undertake any works in the vicinity prior to receipt of 'as-built' drawings.
Paragraph 227(2)(b)	The Applicant considers that the sub-paragraph should be updated as detailed in red below: *"(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—* *…* *(b) any indirect or consequential loss of Uniper or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption which is not reasonably foreseeable."*	The Applicant considers that the restriction that it seeks on liability reflects the default 'at law' position, where it would only be liable for indirect or consequential losses of where they were reasonably foreseeable. The Applicant does not consider this imposing a higher burden is necessary or justified.

8.2 The Applicant is discussing these provisions with Uniper, together with a number of minor amendments required to the protective provisions to align them with other aspects of the draft DCO (Revision H). The Applicant intends to submit a separate update before the close of the Examination confirming the position between the parties and providing a form of protective provisions that it considers should be included in any granted DCO.

9 AIR PRODUCTS (BR) LIMITED

9.1 Air Products (BR) Limited ("Air Products") have land interests and apparatus within the Order Limits. In particular, Air Products has land interests and apparatus within the Order Limits. In particular, the Air Products have assets situated in a pipe rack within the Order Limits. The Applicant and the Air Products have had productive discussions on the terms of protective provisions and the Applicant has included protective provisions for Air Products within the draft DCO (Revision H) as Part 13 of Schedule 9.

9.2 The Applicant notes that Air Products are not a statutory undertaker for the purposes of the Planning Act 2008. The tests in s127 are therefore not engaged. Notwithstanding that, the Applicant has included protective provisions within the draft DCO (Revision H)

that it considers are sufficient to protect Air Products' ongoing operations. The Applicant understands that the terms of these protective provisions are agreeable to Air Products.

10 CONCLUSION

10.1 The Applicant considers that the protective provisions included within the draft DCO (Revision H) are more than adequate to provide the necessary protections to statutory undertakers to avoid serious detriment to their undertaking as a result of the Proposed Development. The Applicant respectfully submits that the Examining Authority and Secretary of State can be satisfied that the protective provisions included within the DCO (Revision H) would satisfy the requirements or section 127 of the Planning Act 2008.