

COMPULSORY PURCHASE ORDER VIKING LINK INTERCONNECTOR 2019

INQUIRY INTO OBJECTIONS

25-28 June and 1-5 July 2019

THE CANAL & RIVER TRUST

Submissions - 25 June 2019

Introduction

1. This note elaborates on the Canal and River Trust's revised Skeleton Submissions¹.
2. The CRT does not, in objecting to the CPO, seek to hinder the proper delivery of the project which provides the rationale for the CPO itself. Its objection centres on the submission that it is only through an agreement between NGVL and the CRT that, in delivering the project, the public interest can reliably be protected.
3. To illustrate this by way of a brief example, the rights sought to be acquired under the CPO provide no recognition of the potential implications of the works for the continued maintenance and use of the river channel and waterway above the cables; nor of the structural risks which construction and use may cause to them; nor of the environmental risks which may similarly be caused. All of these matters, and many more, can and should be addressed within an agreement which respects and provides for the proper interests of both parties.

The joint objective

4. It is my understanding that both NGVL and the CRT wish to reach agreement over the rights to construct the works in accordance with a detailed specification (to be provided) and in accordance with the CRT's Code of Practice ("The Works Agreement").
5. The Works Agreement would include an agreement to grant an easement ("the Deed") following completion of the Works in the terms appended to the Works Agreement.
6. The parties have exchanged copies of draft agreements which reflect a high degree of agreement over their scope and content.
7. There are important benefits to both parties inherent in this approach. For example, there are terms in the draft agreements which protect both parties in the ongoing exercise of their respective functions over the land in question, and those which make explicit certain

¹ As revised to remove any reliance on paragraph 10. A copy is provided with paragraph 10 deleted.

important matters e.g. those governing the resolution of disputes and the scope of reinstatement works.

Negotiations to date

8. It will be no surprise that CRT has a great deal of experience in making provision, by agreement, for the infrastructure operated by others to cross one or other of the waterways under its ownership and control.
9. Notably, the same solicitors as are working for NGVL worked with the CRT to settle similar agreements to serve the Triton Knoll offshore windfarm development. In the spring of 2018 NGVL and CRT agreed to use the Triton Knoll documentation as a starting point for their negotiations in relation to this project.
10. CRT does not entirely agree with the way NGVL characterises its conduct of negotiations in its proofs of evidence, and has mentioned certain shortcomings as to NGVL's approach within its objection. There have, for example, been some inexplicable delays (eg 3 months between receiving the Triton Knoll documentation in October 2018 and their response in February 2019, which followed a chasing email from Jonathan Dickson² in January) and some of the drafting issues would be avoided had NGVL worked up their engineering specification to a greater level of detail.
11. However, CRT does not propose to use inquiry time to argue such matters out or to press the point it made in its objection as to the NGVL conduct of negotiations, as it is unlikely to affect the outcome for the CPO for as long as NGVL agree that an agreement with CRT can and should be reached.
12. On that point, it is worth noting that Jonathan Dickson sent marked up copies of the proposed agreements back to Eversheds for their consideration on 20 June 2019. The parties intend to discuss outstanding issues further on or about the 1 July 2019 – before the close of this inquiry.
13. I propose to leave those discussions to the experts, but we will provide an update as to progress in writing following that discussion.

The CRT objection

14. More significant for the inquiry and your recommendation to the SoS is the relationship between the intended bilateral agreements and the objection of CRT.
15. Assuming the negotiations succeed, the works agreement will make express provision for the circumstances in which the use of CPO powers is permissible (clause 24 of the current draft). With that protection in place, CRT will be in a position to withdraw its objection to the CPO.

² Of Ward Hadaway, on behalf of the CRT.

16. As previously mentioned, CRT is Trustee of the Waterways Infrastructure Trust, holding the land under and in accordance with the Trust Settlement subject to which the SoSEFRA transferred property to CRT previously held by the British Waterways Board. It is also subject to the statutory duty under section 105 of the Transport Act 1968.
17. Should agreement not be reached, CRT will consider itself compelled to maintain its objection to the CPO. The CPO powers are simply too draconian to be consistent with the statutory and other obligations of the CRT.

Mrs Harriet Townsend

Cornerstone Barristers

25 June 2019