

Your Ref EN010148

Our Ref IPP-229

Tuesday 6th October 2026

EN010148 Deadline 8; Canal & River Trust (interested party reference FD78D5BC9)

Canal & River Trust Comments on any additional information/submissions received by deadline 7

The Trust notes the applicant has responded to the Trust's comments in multiple documents, namely:

- 8.26 Applicant Response to Deadline 4 Submissions [REP5-042]
- 8.23 Justification for the Applicants Preferred Protective Provisions (Rev 3) (Tracked) [REP6-046]
- 8.27 Applicant Responses to ExA Commentary on the dDCO (Revision 1) [REP6-047]
- 8.28 Applicant Responses to Deadline 5 Submissions [REP6-048]
- 8.6 Statement of Reasons Appendix 2 Schedule of Landowner Negotiations (Rev 4) [REP6-053]
- 8.33 Applicant Responses to Interested Party Comments on ExA's Commentary on the dDCO (Rev 1) [REP7-005]

The Trust's case for its preferred protective provisions and wording for Art 9(1)(h) is set out in its submissions to the examination, which are listed below for easy reference. Other than the further information provided about indemnities and the comment about temporary possession in this letter, the Trust has no further comments on the applicant's responses. But, the Trust would be very happy to assist the ExA should it have any specific questions or require any further information.

Trust submissions

- Written summary of oral submissions made at ISH1, OFH1 and PM [REP1-070]
- Comments on further information requested by the ExA and received by deadline 3 [REP4-077]
- Comments on further information requested by the ExA and received by deadline 4 [REP5-061]
- Responses to ExA proposed DCO [REP6-086]

The following paragraphs respond to comments raised by the applicant within REP7-005 "8.33 Applicant Responses to Interested Party Comments on the ExA's Commentary on the dDCO (Rev 1)"

DCO 9.4 – Liability Cap with protective provisions for the Trust

On p49, the applicant lists further DCOs that contain protective provisions for the Trust. The Trust is familiar with the proposed NSIP infrastructure and environment relevant to these DCOs and provides the following outline information to assist the ExA to understand that some liabilities have not been capped and the level of liability that is capped.

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The HyNet Carbon Dioxide Pipeline Order 2024 (SI 2024/436)	Schedule 10, Part 7. No cap. Note the Hynet project involves works to construct a pipeline below a canal.
The West Midlands Rail Freight Interchange Order 2020 (SI 2020/511)	Schedule 13, Part 7. No cap. Note the Rail Freight Interchange project does not feature any works tunnelling below a canal.
The Keadby 3 (Carbon Captured Equipped Gas Fired Generating Station) Order 2022 (SI 2022/1396)	Schedule 10, Part 2. Cap for liability for consequential losses - £15 million Note the cap applies to consequential losses only. <i>“Consequential loss” is a term borrowed from contract law and essentially means “losses that are not the natural results of the breach of a contract in the usual course of things but arise from the special circumstances of the case. These are only recoverable as damages for breach of contract if the paying party had notice of the special circumstance when it made the contract. Without that notice, the loss is irrecoverable as too remote.”¹</i> The Keadby 3 project does not feature any construction works to cross under the canal. The red line boundary crossing referred to by the applicant relates to use of an existing bridge for works access. Other works in the canal relate to abstraction apparatus that involves no tunnelling under the canal.

The following paragraph responds to a comment raised by the applicant within REP6-046 “8.23 Justification for the Applicant’s preferred protective provisions (Revision 3)”.

At paragraph 5.9, the applicant explains that under the section 127 test, *“...there is no need for the Secretary of State to be satisfied that there is no serious detriment in the case of temporary possession.”* We wish to highlight that the scope of temporary possession powers sought by the applicant means those powers have the potential to significantly impact the Trust’s undertaking. Whilst there may be no specific test for the decision maker in granting temporary possession powers, it is a matter that is both important and relevant to the Secretary of State’s decision. It is also a matter for the Secretary of State when weighing the adverse impacts of the proposed development against its benefits.

Yours Sincerely

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¹ Practical Law Commercial, Limiting liability: interpretation (accessed 05.10.2026), referencing *Hadley v Baxendale* (1854) 9 Ex 341.

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