

Application by Esso Petroleum Company Limited for the Southampton to London Pipeline Project

Deadline 3 submission submitted on behalf of the Independent Educational Association Limited in response to the Examining Authority's request for details of what the IEAL would like to see included in an Asset Protection Agreement with the Applicant

Planning Inspectorate Reference No: EN70005

Interested Party Reference No: 20022533

Introduction

- 1 This submission is submitted on behalf of The Independent Educational Association Limited (**IEAL**) in response to the Planning Inspectorate's request that the IEAL provide details of what it considers should be included in an Asset Protection Agreement with the Applicant. This request was made at the Issue Specific Hearing held on Wednesday 4 December 2019 and included in the Hearing Action Points.
- 2 As previously outlined in the section 56 representation [**RR-095**] and the IEAL's written representation [**REP2-102**], the IEAL does not object in principle to the Project as a whole. However, it notes that the proposed acquisition of the IEAL's land, rights it has over the land and the compulsory creation of rights over land owned by IEAL or in which IEAL has an interest, will have significant adverse impact on the IEAL and the St James Senior Boys School (**School**) that IEAL owns and operates. As the IEAL has made clear, it strongly objects to the proposed route of the pipeline through the School's grounds and has proposed an alternative route that significantly reduces the adverse impacts on the School.
- 3 However, without prejudice to its argument that the alternative route should be promoted by the Applicant, the IEAL considers that if the Applicant's preferred route is consented, it will be essential for an asset protection agreement to be entered into with the Applicant and for protective provisions to be included in the Order limiting the exercise of the Applicant's powers.
- 4 The IEAL notes, however, that even if the alternative route is promoted and consented, some form of asset protection agreement will be needed. The IEAL's Written Representation [**REP2-102**] provided, at paragraphs 34(a) to 34(d) some information about what should be included in the agreement and/or protective provisions. As requested, further detail is provided in the following paragraphs of the protections for the School that should be included in an agreement or protective provisions in the DCO. Where we refer to the "Proposed Agreement" we mean an agreement and protective provisions.

Property issues

- 5 No compulsory acquisition powers, to acquire land, existing rights in land or to create new rights in land, shall be exercised in respect of the IEAL's land without the IEAL's consent.
- 6 The Applicant shall minimise the extent of land that it needs to carry out the works and, in any event, shall not use a corridor wider than specified.
- 7 The pipeline shall be located at least three metres from the footprint of the proposed new School assembly hall as shown on the Applicant's Land Plan Sheet 122 attached to the IEAL's written representations [**REP2-102**], which shows the footprint of the development permitted by the Assembly Hall Permission edged yellow and marked "Submission on behalf of IEAL – Plan showing location of the proposed Assembly Hall".
- 8 The Applicant shall agree to relocate the route of the pipeline, following reasonable notice having been given by the IEAL, in the event that IEAL wishes to carry out development on its land and planning permission for such development has been obtained.

Impact on the Sports Facilities and Carrying out of the works

- 9 The works undertaken on the School's Land will consist of the installation and operation of a high-pressure aviation fuel pipeline across the School's Land used for a variety of sports by the

School's pupils on a daily basis, which will render them incapable of safe use during the installation. In order to mitigate any impact on the sports facilities and the related operation of the School, the Proposed Agreement should provide for the works to be carried out without any damage being caused to the sports facilities and/or the School's land and, if any such damage is caused, any costs incurred by the IEAL in making good such damage shall be the responsibility of, and paid on demand by, the Applicant.

- 10 The works shall be carried out and operated so as not to prevent the IEAL from developing the School's Land in accordance with the Assembly Hall Permission, the Sport Hall Permission and/or any further permissions granted for the development of the School's Land.
- 11 The works shall be carried out to cause as little disturbance as possible to the operation of the School.
- 12 The works shall be carried out as far as possible only during School holidays and the Applicant shall submit the proposed timings of the works for written approval of the IEAL prior to any works being commenced on the School's Land.
- 13 The IEAL shall be provided with an ability to approve the Applicant's construction environmental management plan (**CEMP**) (an amendment should be made to Requirement 6 to provide the IEAL with this power) insofar as the plan applies to the School.
- 14 No works shall be carried out on the School's Land unless and until all consents, licences, registrations and authorisations (including any statutory or regulatory consents) are in place.

Safety of pupils

- 15 The Applicant shall ensure that its staff, and any staff employed by its contractors, entering the School's Land for the purposes of the works have been authorised to do so by the IEAL and have passed the necessary Disclosure and Barring Service Checks prior to entering the School's Land.
- 16 In addition, the Applicant shall ensure that the following security arrangements are put in place to the satisfaction of the IEAL and retained for the period of the works until the works are completed and no presence of the Applicant's staff, and any staff employed by its contractors, is necessary on the School's Land:
 - (a) the area, within which the works are carried out, remains fenced off from the remainder of the School's Land to prevent any contact by the Applicant's staff, and/or any staff employed by the Applicant's contractors, with the School's pupils; such fencing shall be screened at all times whilst it remains in place;
 - (b) a banksman appointed by the Applicant is placed at the School's gate, at all times while the works are being carried out on the School's Land, to manage the traffic flow associated with the Proposed Development, enforce vehicle speed restrictions, as may be agreed between the IEAL and the Applicant and ensure the general security of the gate;
 - (c) the necessary site facilities, as may be required by the Applicant's staff and/or any staff employed by its contractors throughout the works being carried out, are provided by the Applicant to the satisfaction of the IEAL and to be removed as soon as possible after the works are completed; and

- (d) a Risk Assessment and health and safety documentation, as may be required by the School Estates Manager, acting reasonably, shall be provided for review and approval of the IEAL and no contractors are to be present on the School's Land unless and until such documentation has been provided and approved by the IEAL.

Contamination

- 17 In order to address any contamination issues and the potential release of toxic material into the atmosphere, the works shall be duly monitored for evidence of any unsuspected contamination throughout construction and, if potential contamination is encountered, the works shall stop immediately unless otherwise agreed with the IEAL.
- 18 No further works shall thereafter be carried out on the School's Land unless and until an assessment of the risks presented by the contamination has been undertaken and the details of the findings and any remedial actions have been discussed and agreed with the IEAL.
- 19 Any agreed remedial action shall be subsequently undertaken by the Applicant, at its own cost and at no cost to the IEAL and/or the School, to the satisfaction of the IEAL and a Verification Report confirming that the same has been actioned shall be produced and provided to the IEAL for its written approval as soon as reasonably practicable.

Transfer of powers/novation

- 20 In order to ensure that the IEAL's position remains protected the Proposed Agreement should also include provisions dealing with any transfer of powers by the Applicant to a third party and the novation of the agreement.
- 21 The provisions will need to provide that if the Applicant chooses to appoint any person for the purpose of carrying out the Proposed Development and/or any powers under the DCO are devolved to any person, other than the Applicant, and the provisions of the Proposed Agreement are not directly enforceable against such person, the Applicant will be required to ensure that any transferee enters into a deed of covenant in favour of the IEAL ensuring that such transferee will observe and perform such of the obligations and restrictions of the Applicant under the Agreement as relate to the exercise of the powers which have been transferred as though the transferee had been an original party to the Agreement.

Costs and compensation

- 22 The Applicant shall pay the IEAL's costs, charges and expenses incurred in connection with the services of architects, engineers, surveyors, lawyers or other professional advisers consulted by the IEAL in connection with the preparation and negotiation of the Proposed Agreement.
- 23 Finally the Proposed Agreement should also include an agreement by the Applicant to indemnify the IEAL in respect of all costs and expenses incurred or losses suffered in connection with:
 - (a) any act/omission by the Application that is in breach of the Agreement; and
 - (b) any claim by the IEAL or a third party relating to any act and/or omissions by the Applicant related to the Agreement, the DCO or the Proposed Development.
- 24 The agreement must provide that nothing in the Proposed Agreement shall prejudice the IEAL's right to compensation under the DCO, or any enactment, regulation or statutory instrument

applied by the DCO, arising in consequence of the exercise of any powers conferred by the DCO.

Modification of the DCO

- 25 The agreement should include a restriction on the Applicant from seeking any modification of the DCO in any way which would impact the terms of the Proposed Agreement without obtaining the IEAL's written consent. If any such modification is made without the IEAL's consent, the Proposed Agreement should provide for its terms to remain in force as if the DCO had not been modified.

Addleshaw Goddard LLP

18 December 2019