

From: [Melissa Flynn](#)
To: [North London HPP](#)
Cc: [David Hymas](#); ["Claire McLean"](#); [Tom Deards](#)
Subject: RE: North London Heat and Power Project [WH-WH.FID2382963]
Date: 16 June 2016 07:56:48
Attachments: [image001.png](#)
[Protective provisions \(PDF Clean\)\(15.06.16\).PDF](#)
[15.06.16 Protective provisions \(from DCQ with CRT amends\).PDF](#)

Dear Sirs,

On behalf of the Canal & River Trust, we attach amended protective provisions (tracked changed version and clean version attached) which we request that the Examining Authority admit to be considered as part of the Examination. The attached amended provisions are provided as requested by the Applicant in its response to the Trust's written representations.

We confirm that we have also provided a copy of the attached directly to the Applicant.

Kind regards,

Melissa

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PART 3

Protection of Canal and River Trust

1. The provisions of this Part have effect for the protection of CRT, unless otherwise agreed in writing between the undertaker and the CRT.

2. In this Part–

"1965 Act" means the Compulsory Purchase Act 1965;

“CRT” means the Canal & River Trust and any successor body performing the same functions which holds or manages any of CRT's Property within the order limits;

"CRT's Property" means each and every part of land owned by CRT (whether beneficially or as trustee of the Waterways Infrastructure Trust) within the order limits and includes the Waterway and any other land covered with water, sub-soil, air space and waterways;

“code of practice” means the ""Code of Practice for Works Affecting the Canal & River Trust" as amended from time to time;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“detriment” means any damage to the Waterway or any other of CRT's Property caused by the undertaking or presence of the specified works and, without prejudice to the generality of that meaning, includes:

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the Waterway ;
- (b) the erosion of the bed or banks of the Waterway, or the impairment of the stability of any works, lands or premises forming part of the Waterway;
- (c) the deposit of materials or the siltation of the Waterway so as to damage the Waterway;
- (d) the pollution of the Waterway;
- (e) any significant alteration in the water level of the Waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the Waterway (including any adverse impact on any site of special scientific interest comprised within any of CRT's Property);
- (g) any interference with the exercise by any person of rights over CRT's Property;

“engineer” means an engineer appointed by CRT for the relevant purposes of this Order (and includes a suitably qualified employee of CRT so appointed);

“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any proposed use or occupation of any of CRT's Property;

“specified work” means so much of any of the authorised development to be situated upon, across, under, over or within CRT's Property, or which may in any way cause detriment to the Waterway;

“Waterway” means each and every part of the River Lee Navigation within the order limits, together with its waterway wall and towing path, and any pond or other waterway or course situated on CRT's Property, any works, services, apparatus, equipment, lands (including subsoil) or premises belonging to or under the control of CRT and held or used by it in connection with its statutory functions.

Powers requiring CRT's consent

3. (1) In the exercise of the powers conferred by this Order the undertaker shall not obstruct, or interfere with, pedestrian or vehicular access to the Waterway, unless such obstruction or interference with such access is with the consent of CRT.
- (2) In the exercise of the powers conferred under article 15 (discharge of water) the undertaker shall not discharge water into the Waterway, or in any way interfere with the supply of water to, or drainage of water from, the Waterway unless such exercise is with the consent of CRT (save in relation to surface water through undefined channels, which shall not require the consent of CRT).
- (3) The undertaker shall not exercise the powers conferred under article 18 (authority to survey and investigate land) or section 11(3) of the 1965 Act, in relation to CRT's Property unless such exercise is with the consent of CRT.
- (4) The undertaker shall not exercise the powers conferred under articles 10 to 13 and article 26 (powers in relation to streets and public rights of way) so as to divert any means of access to CRT's Property unless with the consent of CRT.
- (5) The undertaker shall not exercise the powers conferred under articles 27 and 28 (powers as to the use of land for the authorised development) in relation to any of CRT's Property unless with such exercise is with the consent of CRT.
- (6) The undertaker shall not use any of CRT's property for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than-
 - (a) with the consent in writing of the engineer; and
 - (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify-
 - i. for the prevention of detriment; or
 - ii. in order to avoid or reduce any inconvenience to CRT, its officers, agents and all other persons lawfully on such land or property
- (6) The consents required pursuant to sub-paragraphs (1) to (6) shall not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which, in the case of article 15 (discharge of water), may include conditions:
 - (a) specifying the maximum volume of water which may be discharged in any period; and
 - (b) authorising CRT, on giving reasonable notice to the undertaker (except in an emergency, when CRT may require immediate suspension), to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of CRT;
- (7) Nothing in this paragraph 3 shall apply in relation to anything done in accordance with any approval given by CRT under paragraph 4.

Approval of plans, protective works etc.

4. (1) The undertaker must, before commencing construction of any specified work, supply to CRT proper and sufficient plans of that work for the approval of the engineer, and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration in accordance with article 34 (arbitration) of this Order..
- (2) If the engineer has not intimated disapproval of the plans supplied, and the grounds of disapproval, by the end of the period of 35 days beginning with the date on which the last of such required plans have been submitted to CRT by the undertaker, the engineer shall be deemed to have approved the plans as submitted.
- (3) When signifying approval of the plans supplied, the engineer may specify any protective works (whether temporary or permanent and which, for the avoidance of doubt, may include requirements to fence any specified works in order to separate the same from the Waterway or any other of CRT's Property) which, in the engineer's reasonable opinion, should be carried out before the commencement of the construction of a specified work, or during the undertaking of those specified works, to avoid detriment.
- (4) Such protective works as may be agreed between the parties or settled by arbitration in accordance with article 34 (arbitration) must be constructed by the undertaker, at no expense to CRT, with all reasonable dispatch, and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that such of those protective works as are required to be undertaken prior to commencement of construction have been completed to the engineer's reasonable satisfaction.

Design of specified works

5. Without prejudice to its obligations as to the delivery of plans to CRT under the foregoing provisions of this Part, the undertaker must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by CRT as to the design and appearance of the specified works, including the materials to be used for their construction and the environmental effects of those works, and shall have regard to such views as may be expressed by CRT in response to such consultation pursuant in particular to the requirements imposed on CRT by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of CRT in preserving and enhancing the environment of the Waterway.

Surveying of Waterway

6. (1) Both before commencing any specified works upon any land or works which may provide support for the Waterway, and again following practical completion of those specified works, the undertaker shall procure, at no expense to CRT, the carrying out of a survey (including a dip-survey to measure the depth of the Waterway), by an appropriately qualified structural engineer (the "structural surveyor"), approved by CRT (whose approval shall not be unreasonably withheld or delayed), of so much of the Waterway as may be affected by the specified works("the survey").
- (2) For the purposes of the survey the undertaker and CRT shall:
 - (a) afford reasonable facilities to the surveyor for access to the site of the specified works; to any land and existing works of the undertaker which may provide support for the Waterway and to CRT's Property as will or may be affected by the specified works; and

- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require with regard to such existing works of the undertaker; to the specified works and the proposed method of their construction, and with regard to the Waterway.
- (3) The reasonable costs of the survey shall include the costs of any dewatering or reduction of the water level of any part of the Waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part shall apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.
- (4) Copies of the survey shall be provided to CRT at no cost to CRT.

Undertaking of works

- 7. (1) The undertaker shall give to the engineer 30 days' notice of its intention to commence the construction of any of any specified works or protective works (or such notice as may be reasonably practicable in the case of repair carried out in an emergency), so that, where appropriate, CRT may publish notices bringing the undertaking of those works to the attention of users of the Waterway.
- (2) All specified work, and all protective works, when commenced, must be constructed:
 - (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 4;
 - (b) in accordance with the code of practice and under the supervision (where appropriate), and to the reasonable satisfaction of, the engineer;
 - (c) in such manner as to cause as little damage or disturbance as is possible to CRT's Property; and
 - (d) so far as is reasonably practicable, so as not to interfere with the safe use of the Waterway.
- (2) If any damage to CRT's Property is caused by the carrying out of, or in consequence of the construction of, any specified work, the undertaker must make good such damage and must pay to CRT all reasonable and proper expenses that CRT actually incurs by reason of such damage, interference or obstruction.
- (3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of CRT or its servants, contractors or agents or any liability on CRT with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.
- (4) The undertaker must –
 - (a) at all times afford reasonable facilities to the engineer for access to a specified works during its construction; and
 - (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.
- (5) CRT must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by CRT under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them

Prevention of Pollution

8. The undertaker shall not in the course of constructing any specified work or protective work, or otherwise in connection therewith, do or permit anything which may result in the pollution of the Waterway or the deposit of materials therein, and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph 8.

Lighting

9. The undertaker shall provide and maintain at its own expense in the vicinity of the specified works, and any protective works, such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction of those specified works or protective works.

Effect of specified works

10. (1) If at any time during the construction of, or after the completion of, any specified work, CRT gives notice to the undertaker informing it that the state of maintenance of those specified work appears to be such as adversely affects the operation of the Waterway, or otherwise adversely affects CRT's Property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put such specified work in such state of maintenance as shall no longer have such adverse effect.
- (2) If during the construction of any specified work or a protective work, or during a period of twenty four (24) months after the completion of those works, any alterations or additions, either permanent or temporary, to the Waterway are necessary in consequence of the construction of those specified work or protective work in order to avoid detriment, and CRT gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (as are detailed in that notice, the undertaker shall pay to CRT the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by CRT in maintaining, working and, when necessary, renewing any such alterations or additions.
- (3) If the cost of maintaining, working or renewing CRT's Property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the CRT under this paragraph.
- (4) The undertaker shall pay to CRT a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph 10(3), and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order
- (5) In the event that the undertaker fails to complete the construction of, or part of, the specified works or protective works CRT, in order to avoid detriment, may serve a notice in writing on the undertaker requiring that construction be completed. Any notice served under this paragraph shall state the works that are required to be completed by the undertaker, and shall lay down a timetable for their completion. If the undertaker fails to comply with this notice within 35 days, CRT may itself construct the works stated in such notice, (together with any ancillary works) and the undertaker shall reimburse CRT all

costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

(6) CRT must, on receipt of a request from the undertaker provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim or to be made pursuant to this Part.

(7) In respect of any sums due to the CRT from the undertaker referred to in this Part, CRT shall provide such details of the formula by which those sums have been calculated and a breakdown of those sums as the undertaker may reasonably require.

(8) In the assessment of any sums payable to CRT under this Part, there must not be taken into account any increase in the sums claimed that are attributable to any action taken by or any agreement entered into by CRT if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

Compensation and indemnity, etc.

11. (1) If any detriment shall be caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by CRT) shall make good such detriment and shall pay to CRT all reasonable expenses to which CRT may be put, and compensation for any loss which CRT may sustain, in making good or otherwise by reason of the detriment.

(2) The undertaker shall be responsible for and make good to CRT all costs, charges, damages, expenses and losses not otherwise provided for in this Schedule which may be occasioned to and reasonably incurred by CRT:

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work;

and subject to sub-paragraph 11(4) the undertaker shall effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b) (provided that, save as expressly set out in this paragraph, CRT shall not be entitled to recover any consequential losses from the undertaker).

(3) The fact that any act or thing may have been done by CRT on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of CRT or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph 11(2) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or willful default of CRT, its officers, servants, contractors or agents.

(5) CRT shall give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(6) The aggregate cap of the undertaker's gross liability for consequential losses shall be limited to £10,000,000 (ten million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

Repayment of CRT's fees etc.

12. The undertaker shall repay to CRT in accordance with the code of practice all fees, costs, charges and expenses reasonably incurred by CRT:

- (a) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (b) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting any of CRT's Property;
- (c) for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the Waterway.

Agreements

13. The undertaker and CRT may enter into, and carry into effect, agreements for the transfer to the undertaker of:

- (a) any of CRT's Property shown on the works or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such of CRT's Property; and
- (c) and rights and obligations (whether or not statutory) of CRT relating to any of CRT's Property or any lands, works or other property referred to in this paragraph.

Arbitration

14. Any difference or dispute arising between the operator and the undertaker under this Part of this Schedule shall, unless otherwise agreed in writing between the operator and the undertaker, be referred to and settled by arbitration under article 34 (arbitration).

Capitalised sum

15. Any capitalised sum which is required to be paid under this Schedule shall be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

PART 3

Protection of Canal and River Trust

1. The provisions of this Part have effect for the protection of ~~Canal & River Trust~~CRT, unless otherwise agreed in writing between the undertaker and the ~~Canal & River Trust~~CRT.

2. In this Part–

"1965 Act" means the Compulsory Purchase Act 1965;

~~"Canal & River Trust"~~"CRT" means the Canal & River Trust ~~acting as a trustee of the Waterways Infrastructure Trust or~~and any successor body performing the same functions which holds or manages any ~~waterways~~of CRT's Property within the order limits;

"CRT's Property" means each and every part of land owned by CRT (whether beneficially or as trustee of the Waterways Infrastructure Trust) within the order limits and includes the Waterway and any other land covered with water, sub-soil, air space and waterways;

~~"code of practice" means the code of practice for works affecting British waterways (April 2010)"~~"Code of Practice for Works Affecting the Canal & River Trust" as amended from time to time;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"detriment" means any damage to the Waterway or any other of CRT's Property caused by the undertaking or presence of the specified works and, without prejudice to the generality of that meaning, includes:

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the Waterway ;
- (b) the erosion of the bed or banks of the Waterway, or the impairment of the stability of any works, lands or premises forming part of the Waterway;
- (c) the deposit of materials or the siltation of the Waterway so as to damage the Waterway;
- (d) the pollution of the Waterway;
- (e) any significant alteration in the water level of the Waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the Waterway (including any adverse impact on any site of special scientific interest comprised within any of CRT's Property);
- (g) any interference with the exercise by any person of rights over CRT's Property;

~~"engineer" means an engineer appointed by the Canal & River Trust and approved by the undertaker~~CRT for the relevant purposes of this Order (and includes a suitably qualified employee of CRT so appointed);

"plans" includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), programmes and details of the extent, timing and duration of any

proposed use or occupation of any ~~Canal & River Trust property~~ of CRT's Property;

“specified work” means so much of any of the ~~authorized~~ authorised development to be situated upon, across, under, over or within ~~the waterway or that may in any way adversely affect the waterway~~ Canal & River Trust property” means ~~any land owned by the Canal & River Trust within the order limits and includes land covered with water, sub soil, air space and waterways~~ CRT's Property, or which may in any way cause detriment to the Waterway;

“~~waterway~~” Waterway” means ~~the canal~~ each and every part of the River Lee Navigation within the order limits ~~and includes, together with its waterway wall and towing path, and~~ any pond or other waterway or course situated on ~~Canal & River Trust property~~ CRT's Property, any works, services, apparatus, equipment, lands (including subsoil) or premises belonging to or under the control of ~~Canal & River Trust~~ CRT and held or used by it in connection with its statutory functions.

Powers requiring CRT's consent

3. (1) ~~Where under this Part or anywhere else under this Order the Canal & River Trust (or the engineer) is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed.~~ In the exercise of the powers conferred by this Order the undertaker shall not obstruct, or interfere with, pedestrian or vehicular access to the Waterway, unless such obstruction or interference with such access is with the consent of CRT.
- (2) ~~In respect of any specified work or the acquisition of rights under or over or use of Canal & River Trust property, Canal & River Trust must co-operate with the undertaker with a view to avoiding undue delay.~~ In the exercise of the powers conferred under article 15 (discharge of water) the undertaker shall not discharge water into the Waterway, or in any way interfere with the supply of water to, or drainage of water from, the Waterway unless such exercise is with the consent of CRT (save in relation to surface water through undefined channels, which shall not require the consent of CRT).
- (3) The undertaker shall not exercise the powers conferred under article 18 (authority to survey and investigate land) or section 11(3) of the 1965 Act, in relation to CRT's Property unless such exercise is with the consent of CRT.
- (4) The undertaker shall not exercise the powers conferred under articles 10 to 13 and article 26 (powers in relation to streets and public rights of way) so as to divert any means of access to CRT's Property unless with the consent of CRT.
- (5) The undertaker shall not exercise the powers conferred under articles 27 and 28 (powers as to the use of land for the authorised development) in relation to any of CRT's Property unless with such exercise is with the consent of CRT.
- ~~4-(6)~~ The undertaker shall not use any ~~land or of CRT's property of Canal & River Trust forming part of the waterway~~ for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than-
 - (a) ~~With~~ with the consent in writing of the engineer ~~whose consent shall not be unreasonably withheld or delayed~~; and
 - (b) ~~Subject~~ subject to compliance with such reasonable requirements as the engineer may from time to time specify-
 - i. for the prevention of detriment; or

- ii. in order to avoid or reduce any inconvenience to ~~canal & River Trust~~CRT, its officers, agents and all other persons lawfully on such land or property; ~~but nothing~~

(6) The consents required pursuant to sub-paragraphs (1) to (6) shall not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which, in the case of article 15 (discharge of water), may include conditions:

- (a) specifying the maximum volume of water which may be discharged in any period; and
 (b) authorising CRT, on giving reasonable notice to the undertaker (except in an emergency, when CRT may require immediate suspension), to require the undertaker to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of CRT;

(7) Nothing in this paragraph 3 shall apply in relation to anything done in accordance with any approval given by ~~Canal & River Trust~~CRT under paragraph ~~6.4~~.

Approval of plans, protective works etc.

4. ~~5-~~ (1) The undertaker must, before commencing construction of any specified work ~~or carrying out any works on Canal & River Trust property~~, supply to ~~the Canal & River Trust~~CRT proper and sufficient plans of that work for the ~~reasonable approval (having due and proper regard to the undertaker's timetable for the construction of the authorised development)~~approval of the engineer, and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer ~~(such approval not to be unreasonably withheld or delayed)~~ or settled by arbitration in accordance with article 34 (arbitration) of this Order..

(2) ~~¶ If the engineer has not intimated disapproval of the plans supplied, and the grounds of disapproval,~~ by the end of the period of ~~44~~35 days beginning with the date on which ~~the last of such required~~ plans have been submitted to ~~the Canal & River Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is~~CRT by the undertaker, ~~the engineer shall be~~ deemed to have approved the plans as submitted.

(3) When signifying approval of the plans supplied, the engineer may specify any protective works (whether temporary or permanent) ~~that and which, for the avoidance of doubt, may include requirements to fence any specified works in order to separate the same from the Waterway or any other of CRT's Property) which,~~ in the engineer's reasonable opinion, should be carried out before the commencement of the construction of a specified work ~~to ensure the safety or stability of the waterway or the continued safe and efficient use of the waterway or any Canal & River Trust property, and such protective works (which for the avoidance of doubt may include requirements to fence any proposed works in order to separate the same from the waterways, ponds or watercourses situated on Canal & River Trust property either on a permanent or temporary basis) as may be reasonably necessary for those purposes must be constructed by the undertaker, as agreed between the parties or settled by arbitration in accordance with article 34 (arbitration) of this Order, and such protective works must be carried out at the expense of the undertaker with all reasonable dispatch, and the undertaker must not commence the construction of~~

~~the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction, or during the undertaking of those specified works, to avoid detriment.~~

~~(4) Such protective works as may be agreed between the parties or settled by arbitration in accordance with article 34 (arbitration) must be constructed by the undertaker, at no expense to CRT, with all reasonable dispatch, and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that such of those protective works as are required to be undertaken prior to commencement of construction have been completed to the engineer's reasonable satisfaction.~~

Design of specified works

5. Without prejudice to its obligations as to the delivery of plans to CRT under the foregoing provisions of this Part, the undertaker must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by CRT as to the design and appearance of the specified works, including the materials to be used for their construction and the environmental effects of those works, and shall have regard to such views as may be expressed by CRT in response to such consultation pursuant in particular to the requirements imposed on CRT by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of CRT in preserving and enhancing the environment of the Waterway.

Surveying of Waterway

6.
 - (1) Both before commencing any specified works upon any land or works which may provide support for the Waterway, and again following practical completion of those specified works, the undertaker shall procure, at no expense to CRT, the carrying out of a survey (including a dip-survey to measure the depth of the Waterway), by an appropriately qualified structural engineer (the "structural surveyor"), approved by CRT (whose approval shall not be unreasonably withheld or delayed), of so much of the Waterway as may be affected by the specified works("the survey").
 - (2) For the purposes of the survey the undertaker and CRT shall:
 - (a) afford reasonable facilities to the surveyor for access to the site of the specified works; to any land and existing works of the undertaker which may provide support for the Waterway and to CRT's Property as will or may be affected by the specified works; and
 - (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require with regard to such existing works of the undertaker; to the specified works and the proposed method of their construction, and with regard to the Waterway.
 - (3) The reasonable costs of the survey shall include the costs of any dewatering or reduction of the water level of any part of the Waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part shall apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.
 - (4) Copies of the survey shall be provided to CRT at no cost to CRT.

Undertaking of works

7.
 - (1) The undertaker shall give to the engineer 30 days' notice of its intention to commence the construction of any of any specified works or protective works (or such notice as may be reasonably practicable in the case of repair carried out

in an emergency), so that, where appropriate, CRT may publish notices bringing the undertaking of those works to the attention of users of the Waterway.

~~6.~~ ~~(1) Any~~ ~~2)~~ All specified work, and ~~any~~ all protective works ~~to be constructed by virtue of paragraph 5(3) must,~~ when commenced, must be constructed:-

- (a) with all reasonable dispatch ~~(having regard to the undertaker's timetable for construction of the authorised development)~~ in accordance with the plans approved or deemed to have been approved or settled under paragraph ~~5~~ 4;
- (b) in accordance with the code of practice and under the supervision (where appropriate ~~and if given~~), and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage or disturbance as is possible to ~~the waterway;~~ ~~(d) in such a manner to ensure that as few materials are discharged or deposited into any stream, watercourse, waterway, pond or any other water feature on or forming part of the Canal & River Trust property as reasonably practicable;~~ CRT's Property; and
- ~~(d)~~ (e) so far as is reasonably practicable, so as not to interfere with the safe use of the ~~waterway~~ Waterway.

(2) If any damage to ~~the waterway~~ CRT's Property is caused by the carrying out of, or in consequence of, the construction of ~~a,~~ any specified work, the undertaker must make good such damage and must pay to ~~Canal & River Trust~~ CRT all reasonable and proper expenses that ~~Canal & River Trust~~ CRT actually incurs by reason of such damage, interference or obstruction.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligent act or default of ~~Canal & River Trust~~ CRT or its servants, contractors or agents or any liability on ~~Canal & River Trust~~ CRT with respect to any damage, costs, expenses or loss attributable to the negligent act or default of the undertaker or its servants, contractors or agents.

~~7.~~ (4) The undertaker must –

- (a) at all times afford reasonable facilities to the engineer for access to a specified works during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

~~8.~~ Canal & River Trust (5) CRT must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by ~~Canal & River Trust~~ CRT under this Part during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them-

Prevention of Pollution

8. ~~9.~~ The undertaker ~~must repay to Canal & River Trust all reasonable and proper fees, costs, charges and expense reasonably and actually incurred by Canal & River Trust in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified [work].~~ shall not in the course of constructing any specified work or protective work, or otherwise in connection therewith, do or permit anything which may result in the pollution of the Waterway or the deposit of materials therein, and

shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph 8.

Lighting

9. The undertaker shall provide and maintain at its own expense in the vicinity of the specified works, and any protective works, such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction of those specified works or protective works.

Effect of specified works

10. (1) If at any time during the construction of, or after the completion of ~~a~~, any specified work, ~~Canal & River Trust~~CRT gives notice to the undertaker informing it that the state of maintenance of ~~any part of the~~those specified work appears to be such as adversely affects the operation of the ~~waterway~~Waterway, or otherwise adversely affects CRT's Property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put ~~that~~such specified work in such state of maintenance as ~~to not adversely affect the operation of the waterway~~shall no longer have such adverse effect.

- ~~11. The undertaker and Canal & River Trust may enter into, and carry into effect, agreements for the transfer to the undertaker of—~~

- ~~(a) any Canal & River Trust property shown on the works or land plans and described in the book of reference;~~
- ~~(b) any lands, works or other property held in connection with any such Canal & River Trust property; and~~
- ~~(c) and rights and obligations (whether or not statutory) of Canal & River Trust relating to any of the Canal & River Trust property or any lands, works or other property referred to in this paragraph.~~

- ~~12. The undertaker shall repay to Canal & River Trust all fees, costs, charges and expenses reasonably and properly actually incurred by Canal & River Trust—~~

- ~~(a) in constructing any protective works under the provisions of paragraph 5(3);~~
- ~~(b) in respect of the approval by the engineer (if reasonably required) of the construction or repair of a specified work and any protective works;~~
- ~~(c) in bringing the specified works or any protective works to the notice of users of CRT's network.~~

- ~~13. (1) If any permanent or temporary alterations or additions to Canal & River Trust property are reasonably~~during the construction of any specified work or a protective work, or during a period of twenty four (24) months after the completion of those works, any alterations or additions, either permanent or temporary, to the Waterway are necessary in consequence of the construction of ~~athose~~ specified work, ~~or during a period of 12 months after the completion of the authroised development in order to ensure the safety of Canal & River Trust property or the continued safe operation of the waterway, such alterations and additions may be carried out by Canal & River Trust, and if Canal & River Trust~~or protective work in order to avoid detriment, and CRT gives to the

undertaker reasonable notice of its intention to carry out such alterations or additions (~~which must be specified in the~~ as are detailed in that notice), the undertaker ~~must~~ shall pay to ~~Canal & River Trust~~ CRT the ~~proper and~~ reasonable ~~costs~~ of those alterations or additions- including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by CRT in maintaining, working and, when necessary, renewing any such alterations or additions.

(23) If the cost of maintaining, working or renewing ~~Canal & River Trust~~ CRT's Property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the ~~Canal & River Trust~~ CRT under this paragraph.

(4) The undertaker shall pay to CRT a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph 10(3), and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order

(5) In the event that the undertaker fails to complete the construction of, or part of, the specified works or protective works CRT, in order to avoid detriment, may serve a notice in writing on the undertaker requiring that construction be completed. Any notice served under this paragraph shall state the works that are required to be completed by the undertaker, and shall lay down a timetable for their completion. If the undertaker fails to comply with this notice within 35 days, CRT may itself construct the works stated in such notice, (together with any ancillary works) and the undertaker shall reimburse CRT all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

14. ~~(1) Canal & River Trust~~ 6) CRT must, on receipt of a request from the undertaker provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim or to be made pursuant to this Part.

(27) In respect of any sums due to the ~~Canal & River Trust~~ CRT from the undertaker referred to in this Part, ~~the Canal & River Trust~~ CRT shall provide such details of the formula by which those sums have been calculated and a breakdown of those sums as the undertaker may reasonably require.

(38) In the assessment of any sums payable to ~~Canal & River Trust~~ CRT under this Part, there must not be taken into account any increase in the sums claimed that are attributable to any action taken by or any agreement entered into by ~~Canal & River Trust~~ CRT if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

Compensation and indemnity, etc.

11. (1) If any detriment shall be caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by CRT) shall make good such detriment and shall pay to CRT all reasonable expenses to which CRT may be put, and

compensation for any loss which CRT may sustain, in making good or otherwise by reason of the detriment.

(2) The undertaker shall be responsible for and make good to CRT all costs, charges, damages, expenses and losses not otherwise provided for in this Schedule which may be occasioned to and reasonably incurred by CRT:

(a) by reason of the construction of a specified work or a protective work or the failure of such a work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or a protective work;

and subject to sub-paragraph 11(4) the undertaker shall effectively indemnify and hold harmless CRT from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b) (provided that, save as expressly set out in this paragraph, CRT shall not be entitled to recover any consequential losses from the undertaker).

(3) The fact that any act or thing may have been done by CRT on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of CRT or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph 11(2) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or willful default of CRT, its officers, servants, contractors or agents.

(5) CRT shall give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(6) The aggregate cap of the undertaker's gross liability for consequential losses shall be limited to £10,000,000 (ten million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

Repayment of CRT's fees etc.

12. The undertaker shall repay to CRT in accordance with the code of practice all fees, costs, charges and expenses reasonably incurred by CRT:

(a) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;

(b) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting any of CRT's Property;

(c) for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and

(d) in bringing the specified works or any protective works to the notice of users of the Waterway.

Agreements

13. The undertaker and CRT may enter into, and carry into effect, agreements for the transfer to the undertaker of:

- (a) any of CRT's Property shown on the works or land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such of CRT's Property; and
- (c) and rights and obligations (whether or not statutory) of CRT relating to any of CRT's Property or any lands, works or other property referred to in this paragraph.

Arbitration

14. ~~15.~~ Any difference or dispute arising between the operator and the undertaker under this Part of this Schedule shall, unless otherwise agreed in writing between the operator and the undertaker, be referred to and settled by arbitration under article 34 (arbitration).

Capitalised sum

15. Any capitalised sum which is required to be paid under this Schedule shall be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

Document comparison by Workshare Compare on 15 June 2016 15:29:05

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Deleted cell	
Moved cell	
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