



National Infrastructure Planning  
Temple Quay House  
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Your Ref EN010133

Our Ref IPP 153

Thursday 30<sup>th</sup> March 2023

By email only to:  
[CottamSolarProject@planninginspectorate.gov.uk](mailto:CottamSolarProject@planninginspectorate.gov.uk)

Cc'd:  
Eve Browning, Project Manager  
[REDACTED]  
Claire Brodrick, Pinsent Masons LLP  
[REDACTED]

Dear Sir or Madam,

**RE: Cottam Solar Project DCO Application by Cottam Solar Project Limited ("the Application")  
Registration as an Interested Party and Relevant Representation**

The Canal & River Trust ("the Trust") has previously provided comments to the applicant on the route options for the cable connection and now wishes to register and comment as an interested party for the examination relating to the above Application.

### **The Trust's role and responsibilities**

The Trust is a statutory party<sup>1</sup> for the purposes of s.88(3) of the Planning Act 2008 ("the 2008 Act") as the Application is likely to have an impact on the River Trent, or land adjacent to the river, which is an inland waterway in England. The Trust is a statutory undertaker for the purposes of s.127 of the 2008 Act. The Trust is navigation authority for the River Trent and has a duty to maintain the river between Meadow Lane Lock, Nottingham and Gainsborough Bridge as a commercial waterway under s.105 of the Transport Act 1968 and is lessee of the foreshore and riverbed under a lease from The Crown Estate dated 16 February 2011 and registered at the Land Registry under title number NT473004.

The Trust also has environmental and recreational duties under s.22 British Waterways Act 1995 when considering proposals relating to its functions. These include consideration of effects on flora and fauna and preserving access to towing paths for the public. The Trust's charitable objects include, for the public benefit, the preservation, protection, operation and management of inland waterways for navigation and conservation, protection and improvement of the natural environment and landscape of inland waterways.

### **Cottam Solar Project ("the Project") and the River Trent**

The proposed route of the cable connection for the Project would have one interface/crossing (underground) with the River Trent, just south of Trent Port, Marton. The River Trent in this location is a tidal commercial waterway

<sup>1</sup> Reg 3 & Schedule 1, Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (SI 2015/4620)

**Canal & River Trust**

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[REDACTED]

used by both large commercial vessels and for leisure purposes. As navigation authority, the Trust is responsible for navigational safety for this part of the river. The Trust is also the owner and operator of the dredging tips for the deposition of river dredgings, located immediately north of the proposed cable crossing of the River Trent on both sides of the river. This is a rural stretch of river with a mixture of open fields and mature hedgerows within the managed river flood plain. The river corridor is well used for leisure and recreation and the west riverbank carries the long-distance Trent Valley Way path.

### Collaborative working with other solar NSIPs in the area

We note that in the Application document C6.2.4 (ES Chapter 4, Scheme Description), page 25, the applicant states that they are working on a 'Shared' Cable Route Corridor (Works 6B) with Gate Burton Energy Park (EN010131, accepted for examination on 22 February) and West Burton Solar Project (EN010132, application submitted 21 March). The Trust is also aware of the Tillbridge Solar Farm (EN010142) which is at an early stage (application due Q4 2023), but is proposing a cable crossing at a similar location on the river. We welcome a joint working approach with all these schemes to ensure efficiency in the consenting process and to limit the potential for short and long term economic, environmental and social impacts on the navigation and its users.

### Detailed representations

The representations made here are without prejudice to any further or amended representations which the Trust may make following a comprehensive review of the Application as part of the examination process. In this letter, the Trust makes representations on the following:

- The draft Development Consent Order (DCO) and Protective Provisions for the Trust
- The Trust's Third Party Works Code of Practice
- Discharge of water into, and prevention of siltation etc. of, the river Noise & Vibration
- Ecology & Biodiversity in the river
- Lighting during construction
- Landscape and Visual Impact
- Use of River Trent for Works Traffic

### The draft Development Consent Order (DCO) and Protective Provisions for the Trust

There are a number of provisions within the draft DCO which would impact the Trust as navigation authority for the River Trent. The draft DCO was not shared with the Trust as part of a pre-application consultation. On first review, we have concerns with article 16 (discharge of water); article 19 (authority to survey and investigate land); article 20 (compulsory acquisition of land); article 22 (compulsory acquisition of rights), article 25 (acquisition of subsoil); article 30 (temporary use of land); article 31 (statutory undertakers). We have not ascertained whether the disapplication of legislation proposed by article 6 and schedule 3 impacts the Trust and have asked the applicant for a summary of the provisions which would be disapplied.

The draft DCO does not contain any specific protective provisions for the Trust. The Trust notes that other statutory undertakers have been afforded protective provisions within schedule 16. Following the acceptance of the Application for examination, the applicant has indicated in writing separately to the Trust that they would be willing to include protective provisions for the Trust and have invited the Trust to provide draft provisions.

To aid the examination we have provided the applicant with a set of protective provisions which would resolve and satisfy our principal concerns. The protective provisions have been adapted from the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 (made 7 December 2022). A copy of these are appended to this letter. The Trust reserves the ability to add to and amend the draft protective provisions as part of the examination process.

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## The Trust's Third-Party Works Code of Practice

As with other nationally significant infrastructure projects (NSIPs) that include works that interface with the Trust's network, any parts of the Project with the potential to affect the River Trent should be carried out in accordance with the Canal & River Trust Third Party Works Code of Practice (CoP). DCOs for these NSIPs have included an express obligation obliging the applicant to have regard to the CoP in the detailed survey, design, construction and approval of the relevant works. The protective provisions enclosed with this representation contain appropriate wording.

The Trust's CoP is designed to safeguard all users of the navigation and to deal with the nuances of developing adjacent to a commercial waterway with an ever-changing tidal riverbed. The extent of potential impacts from development adjacent to, or under, navigational waters could reach far beyond the crossing point proposed. Ensuring that development is appropriately located and controlled on land adjacent to the Trust's network is crucial to limit the potential for risk to users of the river and the associated economic, environmental and social consequences.

Through the CoP, developers engage with the Trust's engineers who are specialists in navigational safety, the protection and safeguarding of the riverbed and the ecology of the waterway. It is essential that the proposals incorporate appropriate measures to protect the users of the river before, during and after construction for all temporary and permanent works affecting the waterway, including surveying and sampling within the waterway. Engaging with the Trust's engineers ensures the appropriate measures are taken.

The protective provisions and use of the CoP will deal with all of the Trust's concerns relating to:

- Horizontal Directional Drilling and surveys
- Discharge of water into, and prevention of siltation etc. of, the river
- Noise & Vibration
- Ecology & Biodiversity in the river
- Lighting during construction
- Landscape & Visual Impact
- Use of River Trent for Works Traffic

### Horizontal Directional Drilling and surveys

In terms of Work package 6B, relating to the cable crossing of the River Trent, we welcome that this would be undertaken via trenchless techniques with the Crossing Schedule confirming that the crossing beneath the River Trent is proposed by Horizontal Directional Drilling (HDD). Application document C6.2.4 (ES Chapter 4, Scheme Description) paragraph 4.5.44 sets out the current assumed working parameters around the crossing of the River Trent, but paragraph 4.5.51 notes that further detail *"will depend on the results of ground investigations and the final detailed design"* and paragraph 4.5.55 states *"it has not yet been determined exactly where each cable circuit will be micro-sited or the exact crossing point(s)."* With full survey yet to be completed of the river and its ground composition it is perhaps too early to limit the depth of the directional drill beneath the River Trent to 25m below ground level. The Trust consider such surveys necessary to inform the appropriate depth of the directional drill beneath the River Trent (which may be greater than the 25m below ground level quoted) is a necessary precaution. This would inform the design process and prevent the mobilisation of silt from the riverbed which would have potentially detrimental impacts on the navigational safety of the River Trent and its ecology.

We look forward to ensuring that all survey work of the River Trent, including ground investigations, is carried out with full consideration for navigational safety within this commercial waterway and reviewing the technical drawings of the proposal in relation to the riverbed. We propose that this would be in accordance with the mechanisms contained in the protective provisions. Similarly, we look forward to working with the applicant in relation to the

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launch and reception areas for the river crossing, ensuring appropriate measures are put in place to protect and safeguard our assets.

#### Discharge of water into, and prevention of siltation etc. of, the river

The Trust welcomes measures in the Application documents C7.1 (Outline Construction Environmental Management Plan) and C7.19 (Outline Ecological Protection and Mitigation Strategy) which seek to prevent silt and contaminants entering watercourses through the use of sediment/silt traps/temporary dams and engineers overseeing HDD works to ensure an adequate depth is used. We consider the proposed power in the draft DCO for the undertaker to discharge water should, in respect of the River Trent, be subject to the Trust's consent and this, is provided for in the draft protective provisions.

#### Noise & Vibration

In response to the Trust's pre application comments regarding noise and vibration as they affect the River Trent, the Trust welcomes that noise monitoring is proposed as set out in the Application document C7.1 (Outline Construction Environmental Management Plan). We note that this document does not refer to navigational safety either with regards to noise, or vibration during the proposed directional drilling. These matters should be considered as noise could affect navigational safety and the riverbanks and bed may be adversely affected by vibration causing silt mobilisation. We consider the best means of achieving this is through the attached protective provisions.

#### Ecology & Biodiversity in the river

The Application document C6.2.9 (ES Chapter 9: Ecology and Biodiversity), in particular paragraph 9.7.214, notes that the potential for release of sediment during drilling operations will be minimised by careful siting of drilling entry and exit pits, suitable depth control and visual monitoring. We consider the best means of ensuring that the survey, design and construction methodology protects the ecology of the waterway from sediment release during directional drilling beneath the River Trent is through the attached protective provisions.

The Trust recognises the methodology for the protection of biodiversity and ecology found on our dredging tips adjacent to Works Package 6B and welcomes further survey work on this land to further inform the Applicant of necessary mitigation measures in respect of this works package. The Trust would be able to consider the detailed design of those works through the CoP and protective provisions.

#### Lighting during construction

The Application document C7.19 (Outline Ecological Protection and Mitigation Strategy (EPMS)) notes that lighting impacts on retained habitats, bats and freshwater fish are reduced through measures to minimise the need for lighting and the timing of its usage, during all project phases. The EMPS, at paragraph 4.2.2, confirms that no artificial lighting will be employed during works to cross the River Trent and the Trust supports this approach, which will also assist with navigational safety of the River Trent as a commercial waterway. We consider the best means of ensuring navigational safety is not affected by site lighting is through the attached protective provisions.

#### Landscape & Visual Impact

The Trust is satisfied that the applicant has considered the impact of the solar panels on the navigational safety of the River Trent in Application document C6.2.16 (ES Chapter 16: Glint & Glare). This concludes that distance, topography and vegetation would sufficiently screen the proposed panels from view from the River Trent as a commercial waterway and leisure boating route.

Application document C6.2.8 (ES Chapter 8: Landscape and Visual impact) states that no permanent above ground structures are proposed on either side of the River Trent as part of the directionally drilled cable crossing and that

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during the construction period there are likely to be temporary construction compounds that will be removed on completion of the works. We consider the best means of considering the impact of temporary constructions on navigational safety and ecology of the waterway is through the attached protective provisions.

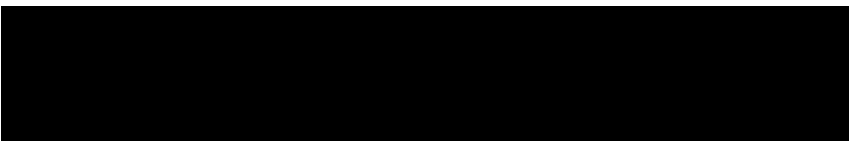
### Use of River for Works Traffic

We note that the use of the River Trent for the transportation of freight to site is considered within Application document C6.2.14 (ES Chapter 14: Transport and Access) and C6.3.14 (ES Appendix 14.2: Construction Traffic Management Plan) where Figure 6.1: Abnormal Loads, on page 27, notes that the existing Cottam wharf is not suitable for delivery of abnormal loads to sites east of the River Trent. The Trust is satisfied that this explains the current approach, but would wish to ensure, through the protective provisions, that if the waterway is proposed for commercial use in connection with the Project the Trust would have oversight of this. For instance, a river crossing by boat might be desired for monitoring/ease of communications between the two sides of the River Trent during construction (the distance by road is approximately 14 miles), which would need temporary jetties and an agreed method for crossing the main navigational route.

The above comments are given without prejudice to other matters or comments that may be raised by the Trust at a later stage of the examination process. Please do not hesitate to contact me with any queries you may have.

Yours faithfully,

**Hazel Smith MRTPI**  
Area Planner – Midlands



Enc. Draft Protective Provisions for Canal & River Trust

**Canal & River Trust**

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## PROTECTIVE PROVISIONS

### FOR THE PROTECTION OF THE CANAL & RIVER TRUST

#### 1. Interpretation

(1) For the protection of the Canal & River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

(2) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2023) or any updates or amendments thereto;

“construction”, in relation to any specified work or protective work, includes—

(a) the execution and placing of that work; and

(b) any relaying, renewal, or maintenance of that work; and “construct” and “constructed” have corresponding meanings;

“Canal & River Trust’s network” means the Canal & River Trust’s network of waterways;

“detriment” means any damage to the waterway or any other property of the Canal & River Trust caused by the presence of the authorised development 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 (including towing paths);

(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 ; and

(g) any interference with the exercise by any person of rights over Canal & River Trust’s network;

“the engineer” means an engineer appointed by the Canal & River Trust for the purpose in question;

“plans” includes navigational risk assessments, sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” is to be construed accordingly;

“protective work” means a work constructed under paragraph [ ] (below, approval of plans etc.)(3)(a);

“specified work” means so much of the authorised development as is, may be, or takes place in, on, under or over the surface of land below the water level forming part of the waterway; or may affect the waterway or any function of the Trust, including any projection over the waterway by any authorised work or any plant or machinery;

“the waterway” means each and every part of the River Trent and includes any works, lands or premises belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with the river.

## **2. Powers requiring the Canal & River Trust’s consent**

(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 16 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust.

(3) The undertaker must not exercise the powers conferred by article 19 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal & River Trust.

(4) The undertaker must not exercise any power conferred by article 29 (temporary use of land for constructing the authorised development) or article 30 (temporary use of land for maintaining the authorised development) in respect of the waterway unless such exercise is with the consent of the Canal & River Trust.

(6) The undertaker must not exercise any power conferred by article 20 (compulsory acquisition of land), article 22 (compulsory acquisition of rights), 25 (acquisition of subsoil) or 31 (statutory undertakers) in respect of the Canal & River Trust's interests in the waterway.

(7) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) to (5) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions.

## **3. Fencing**

Where so required by the engineer the undertaker must, to the reasonable satisfaction of the engineer, fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

## **4. Survey of waterway**

(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the “surveyor”), to be approved by the Canal & River Trust and the undertaker, of a survey to measure the depth of the waterway, the depth and composition of the sediment layer, the composition of the riverbed and land supporting the riverbed (“the survey”) of so much of the waterway and of any land which may provide support for the waterway as will or may be affected by the specified works.

(2) The design of, and methods proposed to be used for, the survey are to be approved by the Canal & River Trust and the undertaker.

(3) For the purposes of the survey the undertaker must—

(a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land of the undertaker which may provide support for the waterway 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 they may reasonably require and which the undertaker holds with regard to the specified works or the method of their construction.

(4) Copies of the survey must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

## **5. Approval of plans, protective works etc.**

(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms, having regard to the Canal & River Trust's Code of Practice and such further particulars available to it as the Canal & River Trust may within 20 working days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 30 working days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he is deemed to have approved the plans as submitted.

(3) An approval of the engineer under this paragraph is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (2) has not been given pending the outcome of any consultation on the approval in question that the Canal & River Trust is obliged to carry out in the proper exercise of its functions.

(4) When signifying approval of the plans the engineer may specify on land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

(a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and

(b) such other requirements as may be reasonably necessary to prevent detriment;

and such protective works must be constructed by the undertaker or by the Canal & River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective



works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(5) The undertaker must pay to the Canal & River Trust 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 (4) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(6) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, the Canal & River Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

## **6. Design of works**

Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust on—

- (a) the design and appearance of the specified works; and
- (b) the environmental effects of those works; and must have regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways;
- (c) amendments or alterations to the construction environmental management plan, landscape and ecological management plan, ecological protection and mitigation strategy, operational environmental management plan, decommissioning plan (as may be approved pursuant to Schedule 2) in respect of a specified work or a protective work or otherwise in connection therewith.

## **7. Notice of works**

The undertaker must give to the engineer 30 working days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's network.

## **8. Construction of specified works**

(1) Any specified works or protective works must, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph (5) (approval of plans etc)] and paragraph (6) (design of works) of this Part;

(b) under the supervision (if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little detriment to the waterway as is reasonably practicable;

(d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;

(e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 16 (discharge of water); and

(f) in compliance with the Code of Practice where relevant;

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968 to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph (4) (survey of waterway) and any other information agreed between them pursuant to this Part.

## **9. Prevention of pollution**

The undertaker must not in the course of constructing a specified work or a 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 must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

## **10. Access to work – provision of information**

(1) The undertaker on being given reasonable notice must—

(a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work 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.

(2) The Canal & River Trust on being given reasonable notice must—

(a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their construction; and

(b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

#### **11. Alterations to the waterway**

(1) If during the construction of a 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 reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust 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 the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway 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 under this paragraph.

#### **12. Repayment of the Canal & River Trust's fees, etc.**

(1) The undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

(a) in constructing any protective works under the provisions of paragraph (5) (approval of plans etc) sub-paragraph (4)(a);

(b) 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;

(c) 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 is reasonably necessary to appoint for inspecting, watching and lighting any waterway and 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;

(d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and

(e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

#### **13. Making good of detriment; compensation and indemnity, etc.**

(1) If any detriment is 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 the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses

incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment.

(2) The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—

(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 protective work, the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b).

(3) The fact that any act or thing may have been done by the Canal & River Trust 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 is not to (if it was done without negligence on the part of the Canal & River Trust 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) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

#### **14. Arbitration**

Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 42 (arbitration) of this Order.

#### **15. Capitalised sums**

Any capitalised sum which is required to be paid under this Part must 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.

#### **16. As built drawings**

As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Trust as built drawings of any specified works in a form and scale to be agreed between the undertaker and the Trust to show the position of those works in relation to the waterway.