

YG-DCO-082(B)

Yorkshire Green Energy Enablement (GREEN) Project

Volume 8

Document 8.5.15(B) Statement of Common Ground between National Grid Electricity Transmission plc and Canal & River Trust (Clean)

**Final Version 2
July 2023**

Planning Inspectorate Reference: EN020024

**Infrastructure Planning (Applications: Prescribed Forms and Procedure)
Regulations 2009 Regulation 5(2)(q)**

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Yorkshire GREEN Project

Document control

Version History

Document	Version	Status	Description / Changes
Statement of Common Ground	1	Draft	For discussion with Canal & River Trust
Statement of Common Ground	2	Final	Final version for Examination

1. Introduction

- 1.1.1 A Statement of Common Ground (SoCG) is a written statement produced as part of the application process for a Development Consent Order (DCO) and is prepared jointly between the applicant and another party. It sets out matters of agreement between both parties, as well as matters where there is not an agreement. It also details matters that are under discussion.
- 1.1.2 The aim of a SoCG is to help the Examining Authority manage the Examination Phase of a DCO application. Understanding the status of the matters at hand will allow the Examining Authority to focus their questioning, and provide greater predictability for all participants in examination. A SoCG may be submitted prior to the start of or during Examination, and then updated as necessary or as requested during the Examination Phase.
- 1.1.3 This SoCG is between National Grid Electricity Transmission Plc (“National Grid”) and Canal & River Trust relating to the DCO application for the Yorkshire GREEN Project. The SoCG relates to the DCO application for the Yorkshire Green Energy Enablement (GREEN) Project (referred to as the Project or Yorkshire GREEN). It has been prepared in accordance with the guidance¹ published by the Department for Levelling Up, Housing and Communities (DLUHC).
- 1.1.4 This SoCG has been prepared to identify matters agreed, matters not agreed and matters currently outstanding between National Grid and Canal & River Trust.
- 1.1.5 This version (V2 July 2023) of the SoCG represents the position between National Grid and Canal & River Trust at Deadline 5 on 11 July 2023.

1.2 Description of the Project

Need for the Yorkshire GREEN Project

- 1.2.1 National Grid propose to upgrade and reinforce the electricity transmission system in Yorkshire. This reinforcement is needed to improve the transfer of clean energy across the country.
- 1.2.2 Electricity flows are set to double within the next ten years as a result of offshore wind developments, other sources of clean energy and expanding interconnection capacity (high-voltage cables that connect the electricity systems of neighbouring countries) in both Scotland and north-east England. Yorkshire GREEN would contribute towards strengthening the national electricity transmission network so that it can accommodate this growth in electricity flows. Reinforcement would ensure that the network is not

¹ Planning Act 2008: Guidance for the examination of applications for development consent. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418015/examinations_guidance-final_for_publication.pdf

overwhelmed, and that potential future pressures on the network are relieved in the north and north-east of England, whilst balancing supply and demand.

1.2.3 Without additional reinforcement, the existing transmission system would become overloaded. To stop these overloads from happening, National Grid Electricity System Operator would need to constrain power generation. Such action could result in significant costs to consumers.

1.2.4 As a result, it is necessary and economical to invest in network reinforcement in the long term, and critically, to ensure that Yorkshire GREEN is designed, tested and installed in sufficient time to meet the 2027 earliest in service date. Reinforcement of the network would enable an increase in the transfer of clean energy, increasing network capacity and avoiding constraint costs.

Yorkshire GREEN Project Description

1.2.5 Yorkshire GREEN comprises both new infrastructure and works to existing transmission infrastructure and facilities. The Project is divided into six sections (see **Figure 1**), located within three Local Authority boundaries² :

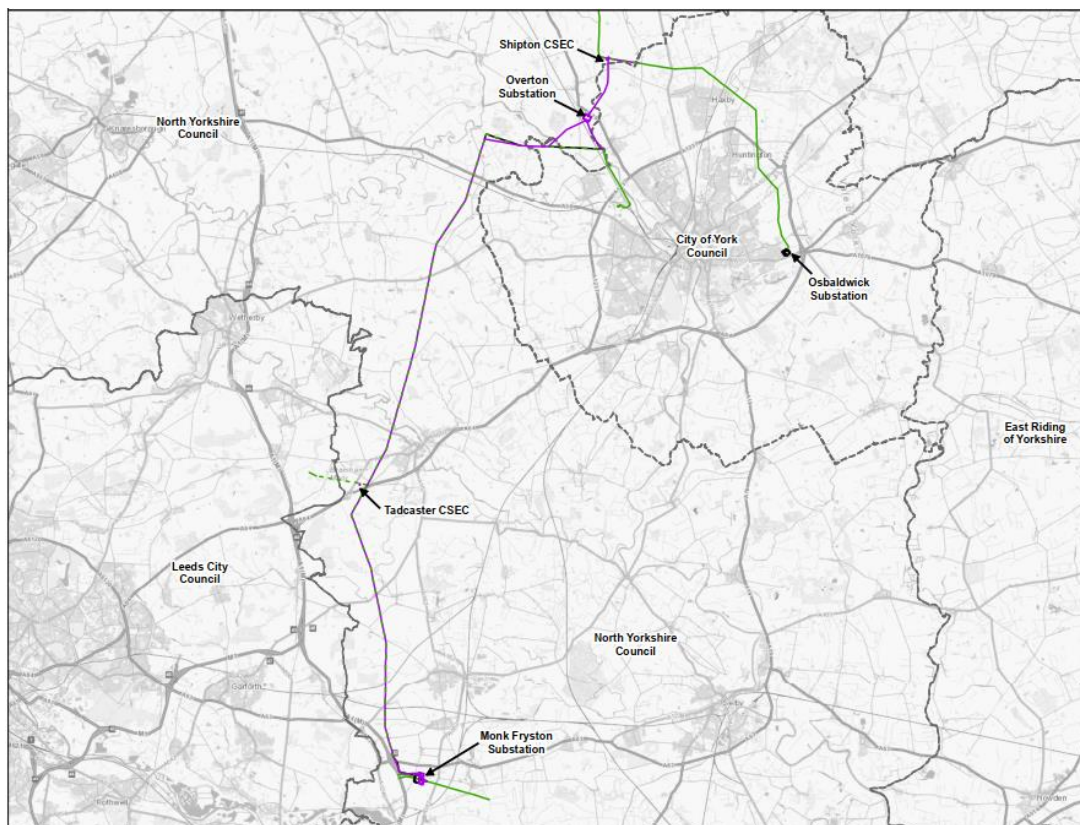
- **Section A (Osbalwick Substation):** Minor works would take place at the existing Osbalwick Substation comprising the installation of a new circuit breaker and isolator along with associated cabling, removal and replacement of one gantry and works to one existing pylon. All substation works would be within existing operational land.
- **Section B (North west of York Area):** Works would comprise:
 - reconductoring of 2.4km of the 400kV Norton to Osbalwick (2TW/YR) overhead line and replacement of one pylon on this overhead line;
 - the new 400kV YN overhead line (2.8km), north of the proposed Overton Substation;
 - the new Shipton North and South 400kV cable sealing end compounds (CSECs) and 230m of cabling to facilitate the connection of the new YN 400kV overhead line with the existing Norton to Osbalwick YR overhead line;
 - a new substation (Overton 400kV/275kV Substation) approximately 1km south of Shipton by Beningbrough;
 - two new sections of 275kV overhead line which would connect into Overton Substation from the south (the 2.1km XC overhead line to the south-west and the 1.5km SP overhead line to the south-east);
 - works to 5km of the existing XCP Poppleton to Monk Fryston overhead line between Moor Monkton in the west and Skelton in the east comprising a mixture of decommissioning, replacement and realignment. To the south and south-east of Moor Monkton the existing overhead line would be realigned up to 230m south from the current overhead line and the closest pylon to Moor Monkton (340m south-east) would be permanently removed. A 2.35km section of this existing overhead line permanently removed between the East Coast Mainline (ECML) Railway and Woodhouse Farm to the north of Overton.

² North Yorkshire Council, City of York Council, and Leeds City Council.

- **Section C (existing 275kV Poppleton to Monk Fryston (XC) overhead line north of Tadcaster (Section D)):** Works proposed to this existing 275kV overhead line include replacing existing overhead line conductors, replacement of pylon fittings, strengthening of steelwork and works to pylon foundations.
- **Section D (Tadcaster):** Two new CSECs (Tadcaster East and West 275kV CSECs) and approximately 350m of cable would be installed approximately 3km south-west of Tadcaster and north-east of the A64/A659 junction where two existing overhead lines meet. One pylon on the existing 275kV Tadcaster Tee to Knaresborough (XD) overhead line would be replaced.
- **Section E (existing 275kV Poppleton to Monk Fryston (XC) overhead line south of Tadcaster (Section D)):** Works proposed to this existing 275kV overhead line include replacing existing overhead line conductors, replacement of pylon fittings, strengthening of steelwork and works to pylon foundations. Work to the existing overhead line similar to those outlined for Section C would be undertaken; and
- **Section F (Monk Fryston Area):** A new substation would be constructed to the east of the existing Monk Fryston Substation which is located approximately 2km south-west of the village of Monk Fryston and located off Rawfield Lane, south of the A63. A 1.45km section of the 275kV Poppleton to Monk Fryston (XC) overhead line to the west of the existing Monk Fryston Substation and south of Pollums House Farm would be realigned to connect to the proposed Monk Fryston Substation. East of the existing Monk Fryston Substation the existing 4YS 400kV Monk Fryston to Eggborough overhead line, which currently connects to the existing substation, would be reconfigured to connect to the proposed Monk Fryston Substation.

1.2.6 Temporary infrastructure would be required to facilitate the Project, including temporary overhead line diversions and temporary construction compounds.

Figure 1– Location of the Yorkshire GREEN Project



1.3 This Statement of Common Ground

1.3.1 For the purpose of this SoCG, National Grid and Canal & River Trust will jointly be referred to as the “Parties”. When referencing Canal & River Trust alone, they will be referred to as “the Consultee”.

1.3.2 Throughout the SoCG:

- Where a section begins ‘matters agreed’, this sets out matters that have been agreed between the Parties or where no issues have been raised by Canal & River Trust, and therefore where there is no dispute;
- Where a section begins ‘matters not agreed’, this sets out matters that are not agreed between the Parties and where a dispute remains; and
- Where a section begins ‘matters outstanding’, this sets out matters that are subject to further negotiation between the Parties.

1.3.3 This SoCG is structured as follows:

- **Section 1:** Provides an introduction to this SoCG and a description of its purpose together with a broad description of the Project;
- **Section 2:** States the role of Canal & River Trust in the DCO application process and details consultation undertaken between the Parties;
- **Section 3:** Sets out matters agreed between the Parties;
- **Section 4:** Sets out matters not agreed between the Parties;
- **Section 5:** Sets out matters where agreement is currently outstanding between the Parties; and
- **Section 6:** Sets out the approvals and the signing off sheet between the Parties.

2. Record of Engagement

2.1 Role of Canal & River Trust in the DCO process

2.1.1 The Canal & River Trust (the Trust) is the charity which looks after and brings to life 2000 miles of canals & rivers. The Trust is a charitable organisation and is the navigation authority for the whole of the navigable River Ouse. The Trust has a duty under S105 Transport Act 1968 (the Act) to maintain commercial waterways in a suitable condition for use and this applies to the relevant part of the River Ouse. In relation to this function and the Act it has duties relating to the safety of navigation on the River, and provision of navigation for vessels which is used by both leisure and commercial vessels. Under its articles of association, the Trust's objects include the object to preserve, protect, operate and manage inland waterways for public benefit for navigation.

- It is a prescribed consultee under Section 42³ of the Planning Act 2008 and therefore National Grid must consult with Canal & River Trust before submitting a Nationally Significant Infrastructure Project (NSIP) application.
- The Planning Inspectorate must consult Canal & River Trust before adopting a scoping opinion in relation to any Environmental Impact Assessment (EIA)⁴ and as a prescribed consultee for the environmental information submitted pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- It is a statutory party in the examination of Development Consent Order (DCO) applications⁵.

2.1.2 As part of the consultation process the Applicant carried out non statutory and statutory consultation. Further information on this consultation is set out in **Section 4 and 5** of the **Consultation Report (Section 4 and 5, Document 6.1) [APP-195]**.

2.1.3 On submission of the DCO, the Canal & River Trust has been invited to participate in the examination of the Project as an Interested Party. During the examination process, the Canal & River Trust may prepare written representations, and respond to written questions from the Examining Authority as well as participate in hearings.

2.2 Summary of pre-application discussions

2.2.1 **Table 2.1** summarises the consultation and engagement that has taken place between the Parties prior to submission of the DCO application. This includes discussions relating to EIA Scoping, s42 statutory consultation and additional technical engagement.

³ Section 42(a) Planning Act 2008 and Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended).

⁴ Regulation 10 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

⁵ Section 88(3) (c) and section 102(ca) Planning Act 2008 and the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015

Table 2.1 – Pre-application discussions

Date	Topic	Discussion points
9 April 2021	Acknowledgement of notice of non-statutory consultation.	N/A
29 March 2021	Response to non-statutory consultation regarding crossing of the River Ouse	Canal & River Trust Code of Practice, landscape and visual impacts, and stability/ vibration impacts.
11 November 2021	Section 42 consultation response	Section 42 consultation response relating to works in proximity to the River Ouse
10 October 2022	Detailed response from National Grid to the Trust in relation to the Section 42 consultation response	Detailed letter responding to the points raised by the Trust in their consultation responses, following further design work.
21 October 2022	Letter from the Trust to National Grid	Letter raising concerns regarding suspending navigation rights on the river Ouse, and the need to co-ordinate with the Trust
1 November 2022	Introductory Meeting email from National Grid to Canal and River Trust	Email from National Grid to request a meeting with Canal and River Trust
3 November 2022	Introductory Meeting- Canal and River Trust and National Grid	Introduction to the project, overview of proposals around the river Ouse (including timing, duration, and construction approach), draft protective provisions intended for the DCO.

2.3 Summary of post-submission discussions

2.3.1 **Table 2.2** summarises the consultation and engagement that takes place between the Parties post submission of the DCO application.

Table 2.2 – Post-submission discussions

Date	Topic	Discussion points
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21 November 2022	Email from National Grid to Trust	Email follow up and request for any comments from the Trusts' legal team on draft DCO wording
2 December 2022	Email from Trust to National Grid	Noted that the Trust are keen to progress matters with regards to the wording of the DCO in advance of the start of the Examination.
7 December 2022 9 December 2022 5 January 2023 18 January 2023	Emails between National Grid and Trust	Exchanges with regards to Protective Provisions and agreement of Undertaking provided by National Grid.
19 January 2023	Email from National Grid to Trust	Commitment to ongoing engagement.
7 February 2023	Draft Protective Provisions	Canal & River Trust response to draft Protective Provisions sent to National Grid
27 February 2023	Email from Trust to National Grid	Email highlighting a request for a SoCG for Deadline 1 (5th April), and enquiry on the provision of a draft SoCG for the Trust for review. Email also enquired about provision of response to Trust's comments on Protective Provisions sent on 7th February 2023.
3 March 2023	SoCG and draft Protective Provision	Holding email confirming that National Grid will be responding to the Trust's comments on the draft Protective Provisions shortly. Also confirmation that National Grid will draft a SoCG and circulate to the Trust
10 March 2023	SoCG and draft Protective Provision	Provision of National Grid's comments on the draft Protective Provisions provision of a draft SoCG for discussion
21 April 2023	Articles and Protective Provisions Email from the Trust to National Grid	Provision of Canal and River Trust latest comments on the Protective Provisions and suggested amendments to the notice periods.
24 April 2023	Articles and Protective Provisions	Update to Protective Provisions issued by Canal and River Trust on 21 April 2023 in respect of one matter.

	Email from the Trust to National Grid	
18 May 2023	Articles and Protective Provisions Meetings and Emails	Meeting held between National Grid and Canal and River Trust on Article 54 and Protective Provisions outstanding points. Updated Protective Provisions issued via email following the meeting, noting National Grid's further consideration of three areas discussed at the meeting with a further update of the Protective Provisions to be provided.
22 May 2023	Articles and Protective Provisions Emails from National Grid to the Trust	Email from National Grid to Canal and River Trust following the meeting held on 18 May and further to updated provisions provided on 18 May to provide a further set of updated Protective Provisions responding to the remaining three areas discussed at the meeting on 18 May.
24 May 2023	Protective Provisions Email from the Trust to National Grid	Email from the Trust to National Grid querying two points in the Protective Provisions.
25 May 2023	Protective Provisions Email from the National Grid to the Trust	Email from National Grid to the Trust responding to the two queries on the Protected Provisions in the email received.
5 June 2023	Protective Provisions Email from the Trust to National Grid	Email from the Trust to National Grid confirming they are aiming to provide comments on the updated Protective Provisions shortly.
8 June 2023	Protective Provisions Emails between the Trust and National Grid	Emails between the Trust and National Grid setting up a meeting for the 15 June 2023 particularly in respect to which any daytime working should be permitted.
15 June 2023	Protective Provisions Meeting held between the Trust and National Grid	Meeting held between the Trust and National Grid on the Protective Provisions particularly in respect of daytime working and agreement reached on way forward to be issued by National Grid following drafting considerations.

19 June 2023	Articles and Protective Provisions Email from National Grid to the Trust	Email from National Grid to Canal and River Trust following the meeting on 15 June providing updated Protective Provisions which seek to resolve outstanding matters associated with daytime working and notice period. Seeking to agree a meeting on 28 June 2023.
27 June 2023	Email from Trust to National Grid	Email from the Trust to National Grid with some minor amendments to the Protective Provisions in advance of the meeting on 28 June.
28 June 2023	Protective Provisions Meeting with National Grid and the Trust	Meeting held between National Grid and Canal and River Trust on Protective Provisions (Article 54 already agreed) outstanding points and seeking to resolve all remaining matters.
29 June 2023	Protective Provisions Email from National Grid to the Trust	Email from National Grid to Canal and River Trust following the meeting on 28 June with final Protective Provisions for Agreement and update Statement of Common Ground.
5 July 2023	Protective Provisions Email from the Trust to National Grid	Email from the Trust to National Grid confirming agreement with the Protective Provisions to be included in the updated DCO (Document 3.1(D)) and submitted at Deadline 5 on 11 July, and enclosed at Appendix A to this document. Article 54 is also agreed taking into account the protection provided by the agreed Protected Provisions.

3. Matters Agreed

3.1.1 This section sets out the matters that have been agreed between National Grid and Canal & River Trust. **Table 3.1** details these matters.

Table 3.1 – Matters agreed

SoCG ID	Matter	Agreed position	Date of Agreement
3.1.1	PEIR	Canal and River Trust take no issue with the PEIR conclusions	March 2023
3.1.2	River Ouse Crossing	Canal & River Trust take no issue with proposals relating to access to the scaffold for crossing of the River Ouse, subject to agreement of protective measures	February 2022
3.1.3	Construction Approach	The Canal and River Trust agree with the construction approach, which the applicant identifies will be further detailed through the use of Construction Management Plans to be secured via DCO Requirement 5 (Document 3.1(D)).	February 2023
3.1.4	Loading and Vibration	The Canal and River Trust take no issue with the proposed approach to managing loading and vibration risks, which the applicant identifies will be mitigated against through the use of a Noise and Vibration Management Plan. Canal and River Trust recognises that the applicant has addressed this matter within the submitted Noise and Vibration Management Plan (Document 5.3.3H Appendix 3H) [APP-101].	February 2023

SoCG ID	Matter	Agreed position	Date of Agreement
3.1.5	Approach to Pollution	The Trust have no issue with the proposed approach to the prevention of pollution. The Trust anticipates that appropriate mitigation measures will be identified within the outline Construction Management Plans secured through Requirement 5(2) and Requirement 6 in Schedule 3 of the draft DCO (Document 3.1(D)).	February 2023
3.1.6	Draft DCO Schedule 15 Part 3 Protective Provisions for the Protection of the Canal and River Trust (Document 3.1(D))	Protective Provisions have now been agreed between National Grid and the Canal and River Trust as set out in Schedule 15 of Part 3 of the draft DCO (Document 3.1(D)) as submitted at Deadline 5, a copy of which is included at Appendix A to this SoCG.	5 July 2023
3.1.7	Relevant Representations (RR-004)	The Trust is now content that the protection afforded by the Protective Provisions included in Schedule 15 Part 3 of the draft DCO (Document 3.1(D)) is sufficient to enable the Trust and the Applicant to manage the interface between the Project and navigation on the River Ouse, so as to appropriately limit the impact upon the Trust's functions, including maintenance responsibilities.	5 July 2023
3.1.8	Draft DCO Article 54 (Document 3.1(D))	The Trust are content with Article 54 of the draft DCO included in the draft DCO (Document 3.1(D)) submitted at Deadline 5 a copy of which is included at Appendix A to this SoCG taking into account to the protection provided by the Protective	5 July 2023

SoCG ID	Matter	Agreed position	Date of Agreement
		Provisions included in Schedule 15, Part 3 of the draft DCO (Document 3.1(D)).	

4. Matters Not Agreed

4.1.1 Section 4 sets out matters not agreed between National Grid and the Trust. **Table 4.1** details these matters.

Table 4.1 – Matters not agreed

SoCG ID	Matter	Canal & River Trust position	National Grid position
N/A	N/A	N/A	N/A

5. Matters Outstanding

5.1.1 Section 5 sets out matters where agreement is currently outstanding between National Grid and Canal & River Trust. In particular **Table 5.1** details these matters.

Table 5.1 – Matters outstanding

SoCG ID	Matter	Canal & River Trust position	National Grid position
N/A	N/A	N/A	N/A

6. Approvals

Signed	Emer McDonnell
On Behalf of	National Grid
Name	Emer McDonnell
Position	Senior Project Manager
Date	5/7/2023

Signed	
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On Behalf of	Canal and River Trust
Name	Simon Tucker
Position	Area Planner
Date	06/07/2023

Appendix A – Article 54 and Protective Provisions for the Protection of Canal and River Trust included in draft DCO (Document 3.1(D)) submitted at Deadline 5

Temporary closure of, and works in, the River Ouse

54 —(1) The undertaker may, subject to Part 3 of Schedule 15 (protective provisions), in connection with the construction and maintenance of the authorised development, temporarily interfere with the relevant part of the river for the purposes of the removal, installation and maintenance of the overhead electric lines comprised in Work No. 6 (XC and XCP overhead electric lines, and XC overhead electric line) of Schedule 1 (authorised development) and any associated development in connection with it.

(2) Without limitation on the powers conferred by paragraph (1) but subject to paragraphs (3) and (4) the undertaker may, in connection with the construction and maintenance of the authorised development on grounds of health and safety only, temporarily close to navigation the relevant part of the river.

(3) The power conferred by paragraphs (1) and (2) must be exercised in such a way which secures—

- (a) that no more of the relevant part of the river is closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure to navigation of the relevant part of the river becomes necessary, all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.

(4) During the period of any closure referred to in paragraph (2) all rights of navigation and other rights relating to and any obligations of the Trust to manage the relevant part of the river so closed are to be suspended and unenforceable against the Trust.

(5) Any person who as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private rights of navigation is entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) In this article, “the relevant part of the river” means so much of the River Ouse as is within the Order limits and the “Trust” means the Canal & River Trust.

Schedule 3, requirement 17

Clearance over the River Ouse

17. No part of any overhead electric line shall be installed or maintained directly above the River Ouse at a height of less than 10 metres above the mean high water level of that river.

PART 3

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

Interpretation

1.—(1) For the protection of the Trust the following provisions of this part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Trust, in relation to the removal, installation and maintenance of the overhead electric lines comprised in Work No. 6 (XC and XCP overhead electric lines, and XC overhead electric line) of Schedule 1 (authorised development) and any associated development in connection with it.

(2) In this part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal and River Trust (April 2023) or any updates or amendments thereto (provided any such updates or amendments do not adversely impact the ability of the undertaker to construct and maintain Work No.6 (XC and XCP overhead electric lines, and XC overhead electric line) of Schedule 1 (authorised development) and any associated development in connection with it);

“the Trust” means the Canal & River Trust;

“the Trust’s network” means the Trust’s network of waterways;

“detriment” means any damage to the waterway or any other property of the Trust caused by the presence of Work No. 6 (XC and XCP overhead electric lines, and XC overhead electric line) of Schedule 1 (authorised development) and any associated development in connection with it 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 interference with the exercise by any person of rights over the Trust's network;

"the engineer" means an engineer appointed by the Trust for the purpose in question;

"plans" includes navigational risk assessments, plans, 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;

"specified work" means so much of Work No. 6 (XC and XCP overhead electric lines, and XC overhead electric line) of Schedule 1 (authorised development) and any associated development in connection with it 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 Ouse, and includes any works, lands or premises belonging to the Trust, or under its management or control, and held or used by the Trust in connection with that river.

(3) The Code of Practice applies to any specified work and where there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions does not apply and these protective provisions apply.

Notice to be given prior to specified works

2. (1) Unless 28 days' prior written notice is given by the undertaker to the Trust (or such other period as is agreed in writing between the undertaker and the Trust), the undertaker will not construct or, to the extent that it would affect the waterway or any function of the Trust, maintain any specified work between—

(a) 10pm and 6am during the months April to October; or

(b) 7pm and 7am during the months November to March.

(2) The undertaker will not construct or, to the extent that it would affect the waterway or any function of the Trust, maintain any specified work outside of the timescales provided for within subparagraphs (1)(a) and (1)(b) unless otherwise agreed in writing between the undertaker and the Trust.

(3) Paragraphs (1) and (2) will not apply in the case of emergency, in which case no prior written notice is required and immediate access must be afforded by the Trust.

Fencing

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

Survey of waterway

4.—(1) Before the initial construction or, to the extent that it would affect the waterway or any function of the Trust, maintenance of any part of the specified work and again following practical completion of the specified work the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the "surveyor"), to be approved by the Trust and the undertaker (such approval not to be unreasonably withheld), of a survey ("the survey") of so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified work.

(2) 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 work and to any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified work; and

(b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require and which the undertaker holds with regard to such existing works of the undertaker and to the specified work or the method of their construction.

(3) Copies of the survey must be provided to both the Trust and the undertaker at no cost to the Trust.

(4) The surveyor must undertake the survey required under sub-paragraph (1) in a timely manner so as to cause no unreasonable delay to the initial construction or, to the extent that it would affect the waterway or any function of the Trust, maintenance of any part of the specified work.

Approval of plans etc.

6.—(1) The undertaker must before the initial construction or, to the extent that it would affect the waterway or any function of the Trust, commencement of maintenance of any specified work including any temporary works supply to the Trust proper and sufficient plans of that work having regard to the Trust's Code of Practice and such further particulars available to it as the Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction or, to the extent that it would affect the waterway or any function of the Trust, maintenance of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) Subject to sub-paragraph (3), an application for approval under this paragraph is deemed to have been approved if it is neither given nor refused within 28 days of the specified day.

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

(4) In this paragraph "the specified day" means, in relation to any specified works:

- (a) the day on which plans and sections of that work are submitted to the Trust under sub-paragraph (1); or
- (b) the day on which the undertaker provides the Trust with all further particulars of the work that have been requested by the Trust under that sub-paragraph,

whichever is the later.

Failure to complete specified works

5.—(1) In the event that the undertaker fails to complete the construction of, or part of, the specified work by the end of the construction period for the stage within which the specified work is included the Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that the specified work 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. The undertaker must complete the specified work as soon as reasonably practicable following receipt of any such notice. If the undertaker fails to comply with this notice within 35 days, the Trust may, so far as it is capable, construct any of the specified works, or part of such works, (together with any adjoining works), except for Work No. 6 (XC and XCP overhead electric lines, and XC overhead electric line) of Schedule 1 (authorised development), in order to complete the specified work, or part of them, and the undertaker must reimburse the Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Lighting

6. The undertaker must provide and maintain at its own expense in the vicinity of the specified work such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or, to the extent that it would affect the waterway or any function of the Trust, maintenance of the specified work.

Construction of specified works

7.—(1) Any specified work must, be constructed and maintained—

- (a) with all reasonable dispatch in accordance with any such plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 6 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 as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that any temporary obstruction or restriction or diversion of the rights of navigation have otherwise been agreed by the Trust or are permitted under this Part;
- (e) in such a manner as to ensure that no materials are discharged or deposited into the waterway under this Order otherwise than in accordance with article 19 (discharge of water); and
- (f) in compliance with the Code of Practice.

(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 Trust is required by section 105(1)(b) and (2) (maintenance of waterways) of the Transport Act 1968 to maintain the waterway.

(3) Following the completion of the construction and, to the extent that it would affect the waterway or any function of the Trust, any maintenance of the specified work the undertaker must restore the waterway, save in respect of the retention of the new permanent overhead line comprised in Work No. 6 (XC and XCP overhead electric lines, and XC overhead electric line) of Schedule 1 (authorised development), to a condition no less satisfactory than its condition immediately prior to construction or maintenance of that work, unless otherwise agreed between the undertaker and the Trust.

(4) In assessing whether the condition of the waterway is no less satisfactory than its condition immediately prior to the works pursuant to sub-paragraph (3), the Trust and the undertaker must take account of any survey issued pursuant to paragraph 5 and any other information agreed between them pursuant to this Part.

Access to work – provision of information

8.—(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, to the extent that it would affect the waterway or any function of the Trust, maintenance; 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 and maintaining it.

(2) The Trust on being given reasonable notice must 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 Trust's reasonable costs in relation to the supply of such information.

Maintenance of works

9. If at any time after the completion of a specified work, not being a work vested in the Trust, the Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of the Trust's fees, etc.

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

(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, to the extent that it would affect the waterway or any function of the Trust, maintenance of a specified work;

(b) in respect of the employment during the construction or, to the extent that it would affect the waterway or any function of the Trust, maintenance of the specified work 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 work;

(c) in bringing the specified work to the notice of users of the Trust's network; and

(d) in constructing and/or carrying out any measures as a result of any specified work which are reasonably required by the Trust to ensure the safe navigation of the waterway save that nothing is to require the Trust to construct and/or carry out any measures.

(2) If the Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of twenty-one days—

(a) provide confirmation to the Trust that the estimate is agreed and pay to the Trust, by the date stipulated, that fee, charge, cost or expense; or

(b) provide confirmation to the Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(3) The Trust must take in to account any representations made by the undertaker in accordance with this paragraph 12 and must, within twenty-one days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) any dispute as to the fee, charge, cost or expense specified by the Trust pursuant to sub-paragraph (3) will be settled by arbitration in accordance with article 53 (arbitration) of this Order.

Making good of detriment; compensation and indemnity, etc.

11.—(1) If any detriment is caused by the construction or failure of the specified work if carried out by the undertaker, the undertaker (if so required by the Trust) must make good such detriment and must pay to the Trust all reasonable and proper expenses incurred by the Trust, and compensation for any loss sustained by the Trust in making good or otherwise by reason of the detriment.

(2) The undertaker must be responsible for and make good to the 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 Trust—

(a) by reason of the construction or, to the extent that it would affect the waterway or any function of the Trust, maintenance of a specified 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 or, to the extent that it would affect the waterway or any function of the Trust, maintenance of a specified work;

and subject to sub-paragraph (4) the undertaker must effectively indemnify and hold harmless the Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in subparagraphs (a) and (b) (provided that the Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable) subject to a maximum sum of £10 million (ten million pounds).

(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, damage, loss or interruption to the extent that it is attributable to the act, neglect or default of the Trust, its officers, servants, contractors or agents.

(5) The 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.

Arbitration

12. Any difference arising between the undertaker and the 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 53 (arbitration) of this Order.

As built drawings

13. 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 work to show the position of that work in relation to the waterway.

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