



**Canal &  
River Trust**

Making life better by water

National Infrastructure Planning  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

**Your Ref** EN070007

**Our Ref** IPP-135

**Friday 13 January 2023**

[hynetco2pipeline@planninginspectorate.gov.uk](mailto:hynetco2pipeline@planninginspectorate.gov.uk)

Dear Sir/Madam,

**RE: Hynet Carbon Dioxide Pipeline DCO Application by Liverpool Bay CCS Limited (“the Application”)**

**S56 Relevant Representation - Interested Party**

The Canal & River Trust (“The Trust”) has previously provided comments to the Applicant on the route options for the pipeline and now wishes to register and comment as an Interested party for the Examination relating to the above Application. The Trust is a statutory undertaker for the purposes of s.127 Planning Act 2008 (“the 2008 Act”) and a statutory party for the purposes of s.88(3)(c) of the 2008 Act. The Trust has operational land, infrastructure and other interests affected by the works and powers proposed.

The Trust has a duty under the Trust Agreement with the Secretary of State for Environment, Food and Rural Affairs (28 June 2012) to operate and manage the waterways and towpaths for public use and enjoyment. Additionally, the Trust has a duty under s.105 Transport Act 1968 to maintain commercial and cruising waterways in a suitable condition for use by the public.

#### Background

The Trust is the charity which looks after and brings to life 2000 miles of canals & rivers. Our waterways contribute to the health and wellbeing of local communities and economies, creating attractive and connected places to live, work, volunteer and spend leisure time. These historic, natural and cultural assets form part of the strategic and local green-blue infrastructure network, linking urban and rural communities as well as habitats. By caring for our waterways and promoting their use we believe we can improve the wellbeing of our nation. The Trust is a prescribed consultee in the Nationally Significant Infrastructure Projects (NSIP) process pursuant to Schedule 1 of the Infrastructure Planning (Application: Prescribed Forms & Procedure Regulations 2009).

The Trust owns and manages the Shropshire Union Canal, which is within the designated Chester Canal Conservation Area and is a County Wildlife site. The proposed route of the pipeline would have one interface/crossing (underground) with the Trust owned waterway, just north of the Trust owned Bridge 134 (Caughall). A section of the proposed pipeline would also run parallel to the canal corridor here. This is a rural stretch of canal with a mixture of open fields, mature hedgerows and pockets of woodland. The canal corridor is well used for leisure and recreation and the towpath here also carries National Cycle Route 5 (NCR5).

The representations made here are without prejudice to any further/amended representations which the Trust may make following a comprehensive review of the Application as part of the Examination Process. Currently the Trust intends to make submissions in relation to the following:

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- Compulsory Acquisition of Trust Land
- The draft Development Consent Order (DCO)
- Protective Provisions for the Trust
- The Trust's Third Party Works Code of Practice
- Surface water drainage to the canal
- Environmental Mitigation and the Outline Landscape Environmental Management Plan
- The Construction Environment Management Plan
- The Construction Traffic Management Plan
- Landscape and Visual Impact

### Compulsory Acquisition of Trust Land

We refer to the Applicant's Book of Reference and note that the Trust is listed as owner of 2 plots of land which would either be subject to permanent or temporary acquisition. The Order seeks to permanently acquire the subsurface of the canal, bank, verge, towpath and NCR5 lying to the east of Coughall Road (plot 8-03) in relation to Work No.18. This is held under our title CH569303. The Order also seeks temporary possession of land, woodland and track lying to the east of Liverpool Road (plot 9-06) in relation to Work No.23A (this should be Work No.23B as the Order as drafted contains two Work No.23A's). This is held under our title CH503654.

Land Plan Sheet 8 of 37 (Document Reference D2.2) also shows the red line between plots 8-02 and 8-06 including the Shropshire Union canal. These parcels of land are required temporarily in relation to Work No 18A and include a section of canal. It is understood that in terms of the red line including the canal corridor that this is a drafting error. It is understood that the Applicant will be correcting this during the course of the Examination process.

The Trust hereby formally **objects** to the Compulsory Acquisition of Trust Land. This is on the basis that there is not a compelling case in the public interest for compulsory purchase powers to be acquired in the manner sought by the Applicant. Such powers are intended to be used as a matter of last resort and the Applicant has failed to use reasonable efforts to voluntarily acquire the land and rights they require from the Trust. Based on the submitted Land Plans we also question the justification for the extent of our land they seek to acquire for a single pipeline crossing of the canal. We consider acquiring a right over a narrow section of subsoil at least 3.5m below the bed level of the canal would be sufficient for the pipeline.

The Trust is a statutory undertaker which has specific duties to protect the waterways. Accordingly, we have a duty to resist the use of compulsory purchase powers which may negatively affect our land or undertakings. Alternatively, should any compulsory acquisition powers over the Trust's land be retained in the Order, such acquisition should only be with the consent of the Trust. As set out below, the Trust are further prejudiced in relation to this matter as the draft Order does not contain any protective provisions for the Trust to safeguard and protect our undertakings.

The Trust is willing to engage with the Applicant to enter into an agreement in respect of the rights which the Applicant requires to deliver the works.

As the Trust owned land related to the waterway is registered as Infrastructure Trust Property (plot 8-03) then the separate consent of DEFRA would also be required. We would advise that the timeframe for obtaining such DEFRA consent can take between 3-6 months.

### The draft Development Consent Order (DCO)

There are a number of provisions within the draft DCO which will impact on the Trust and interests it seeks to protect and promote as owner and operator of the Shropshire Union Canal and associated infrastructure.

The draft DCO was not shared with the Trust as part of a pre-application consultation. The Trust are in the process of reviewing this document with the aim of providing initial comments to the Applicant. On first review we would have concerns with Article 6 (limits of deviation); Article 19 (discharge of water); Article 21 (survey and investigate land); Part 5 powers of acquisition and Article 24 (compulsory acquisition of land); Article 31 (acquisition of subsoil); Article 34 (temporary use of land); Article 36

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(statutory undertakers) and Article 39 (removal of hedgerows) – this list is not exhaustive. The Trust do require further opportunity to consider the detail of these provisions in light of the documents now submitted by the Applicant, before any further representations are made on these matters.

### Protective Provisions for the Trust

The draft DCO as submitted does not contain any specific protective provisions for the Trust as a statutory undertaker. The Trust notes that other statutory undertakers have been afforded protective provisions within the Order under Schedule 10. Following the acceptance of this application for Examination, the Applicant has indicated in writing separately to the Trust that they have no objection in principle to including protective provision for the Trust within the Order and that the omission was only because they had not had the opportunity to discuss these with the Trust.

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), being the most recent NSIP to be examined and which contains provisions relevant to the Trust land and assets. 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 as may be required following a full review of the Application.

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

The Applicant has agreed with the Trust that any works that interface with our waterways would be carried out in accordance with the Canal & River Trust Third Party Works Code of Practice (CoP) and indeed application forms have already been provided to the Trust in relation to Work No.18. As with previous DCOs authorising works affecting the Trust's land or assets, the Trust requires an express obligation obliging the Applicant to have regard to the CoP in the detailed 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 our assets and to deal with the nuances of developing adjacent to a 200-year-old waterway heritage asset which is not built to modern engineering standards. These features have an inherent fragility and the extent to which development adjacent to or under them may affect their stability can reach far beyond any narrow waterway corridor. Ensuring that development is appropriately located and controlled on land adjacent to our network is crucial to limit the potential for failure of our infrastructure and the associated economic, environmental and social consequences of this.

Through the CoP, developers engage with the Trusts engineers. The Trust's engineers are specialists in canal engineering and the protection and safeguarding of our specialist waterway assets. It is essential that the proposals incorporate appropriate measures to protect the structural integrity of our waterways and their users both during and after construction for all temporary and permanent works affecting our waterways. Engaging with the Trust's engineers ensures the appropriate measures are taken.

In terms of Work 18, relating to the pipeline crossing of the canal, we welcome that this would be undertaken via trenchless techniques. Submission document 6.2.3 (ES Chapter 3, Description of DCO proposed development), paragraph 3.6.61: sets out that trenchless techniques include *"Horizontal Directional Drilling (HDD), Auger Boring Guided (GAB) and Unguided (UAB)) and Micro-Tunnelling are three types of trenchless installation techniques that are most likely to be utilised by the Construction Contractor(s) once the Detailed Design has been completed"*. From prior discussion with the Applicant it is understood that the underground canal crossing would be installed using horizontal directional drilling with the launch pit and reception pit set well away from the canal corridor. We look forward to reviewing the technical drawings in accordance with the mechanisms to be contained in the protective provisions in relation to these works in due course and in terms of the launch and reception areas for the canal crossing, ensuring appropriate measures are put in place to protect and safeguard our assets.

### Surface water drainage to the canal

The Trust would not accept any silt laden or potentially contaminated surface water from dewatering of excavations from the construction works or discharge from wheel washing etc. The Trust would however consider the acceptance of clean surface

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water from above ground installations to the Trust owned canal. The Trust is not a land drainage authority and such discharges are not granted as of right but would be the subject of the separate agreement with the Trust. Any flows would need to be attenuated and result in no net increase in flows. We would also need to be satisfied that there would be no net increase in flows as a result of the works to any watercourses which are culverted underneath the canal.

The submission documents show that the drainage for the Rock Bank Block Valve Station (BVS) (Work No.20) would appear to connect to a 'canal ditch' which would appear to have an outfall to the canal next to bridge 134. Clarification has been sought from the Applicant in relation to this drainage. The route and direction of the ditch flow are unknown, but it appears that the ditch discharges to the canal. If this is the case then the surface water discharge would need to be reviewed and a discharge licence will be needed.

#### Environmental Mitigation and the Outline Landscape Environmental Management Plan

Work No.57G relates to the creation of environmental mitigation north of the Shropshire Union canal and would include woodland planting. It is essential that any tree planting here is offset from the canal by a minimum of 5m to ensure that the roots of the trees do not interfere with the clay lining of the canal and cause leakage or undermine the stability of the canal. Tree root barriers or similar may be required to be installed. We would also wish to be consulted on the native species mix to be provided here.

In terms of the Outline Landscape Environmental Management Plan (LEMP) the Trust would wish to be consulted further on the specific and detailed landscaping to be provided in the vicinity of the canal corridor to ensure that such planting is appropriate to the setting of the canal conservation area and would not impact the structural integrity of the canal.

In terms of Biodiversity Net Gain it is not entirely clear whether there will be any waterway credits to be spent. In principle if there are we would welcome further discussions with the Applicant in terms of any enhancement to the canal corridor here.

The Arboricultural Impact Assessment shows that a number of trees within the vicinity of the canal corridor may be removed to facilitate the works. Any tree removal within 5m of the canal corridor would need to be carried out under supervision of the Trust to ensure that the waterway infrastructure would be safeguarded. The tree roots should be retained in situ and treated to prevent regrowth as opposed to being grubbed out/removed.

#### The Construction Environment Management Plan

A high level generic Construction Environment Management Plan (CEMP) has been submitted with the application documentation. We welcome that the document states that the contractor will engage with the Trust to minimise impacts to the canal. However, it will be important that the Trust is fully engaged on these measures and given sufficient time for review of the CEMP and subsequent detailed CEMP's.

All CEMPs relating to works with the potential to affect the canal will need to be robust and comprehensive and include specific canal protection measures. They will need to include aspects of how materials, fuels, chemicals and wastes will be stored and where; measures for the prevention of dust generation and windblown litter and debris; measures to prevent run off into the canal and culverts (e.g. of silty water, contaminated water, fuels and chemicals); pollution response emergency procedures (including training of individuals, reporting as well as the physical mitigation and incident clean up); measures to be taken to ensure noise and vibration from drilling would not affect canal/towpath users; details of any planned water abstractions and /or discharges from or which may impact upon the canal and details of any oil interceptors and the steps to be taken if any unknown contamination is encountered during the works. We note that the Outline Soil Management CEMP sets out that stockpiles will be set away from ditches and watercourses by a minimum of 10m. We welcome that stockpiles will be a minimum of 10m away from watercourses but it will also be important that dust suppression is deployed and stockpiles are sheeted to prevent generation of dust and silty water affecting watercourses and the canal corridor.

The route of the pipeline crosses a number of watercourses which appear to be culverted under the canal, this includes Backford Brook, which is managed by the Environment Agency, by development associated with Work No.23. During the works such watercourses could be at risk of siltation during any land clearance and construction works associated with the pipeline. The

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culverts flow north to south to discharge on the towpath side and as such any silt from the works on the offside could block the culverts, which would be of concern to the Trust and measures will need to be taken to prevent this and protect these watercourses.

#### The Construction Traffic Management Plan

The details set out that access to the Chorlton Lane Compound via the canal crossing Pretty Bridge (Bridge 134 Caughall) over the canal has been discounted due to the bridge having a 3.5T weight limit. We welcome that Figure 17-4 Construction Traffic Route Sheet 2 of 8 shows that both construction routes CC CTR2 and CC CTR3 would be directed to avoid crossing the canal in this location to access the construction compounds.

#### Landscape and Visual Impact

The Landscape and Visual Impact Assessment appears to provide an appropriate consideration of the canal corridor and waterway users. There would be some temporary localised impacts associated with the construction works but given that the crossing of the canal would be underground and carried out via a horizontal directional drilling technique then the impact on the immediate environs of the waterway and towpath hedgeline should be limited. The mitigation planting and landscaping to be undertaken should also reduce the long-term visual impacts associated with the works.

In terms of the permanent works the Rock Bank BVS would be the closest permanent above ground installation to the canal corridor, but this would be far enough away from the canal corridor to not have an adverse visual impact and would be screened by existing vegetation and land topography.

The above comments are given without prejudice to other matters/comments that may be raised by the Trust at a later stage following a full review of the application documents. Please do not hesitate to contact me with any queries you may have.

Yours sincerely,

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## Draft Protective Provisions for the protection of the Canal & River Trust

(To be inserted within Schedule 10, as a new Part [ ], of the draft DCO submitted as part of the HyNet Carbon Dioxide Pipeline DCO Application (Ref: EN070007, Document Ref D3.1))

(Wording in 'square brackets' refers to provisions to be discussed with the Applicant)

### 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 2022) 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 [as may be carried out during the period of [ ] months from the completion 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 (including any adverse impact on any site of special scientific interest comprised in the Canal & River Trust’s network); 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 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 Work Nos., [18, 18A, 19, 19A, 19C, 20, 20A, 22, 23, 23B, 57G] as is situated upon, across, under, over or within [ ] metres of, or may in any way affect the waterway;

“the waterway” means each and every part of the Shropshire Union Canal within the order limits, and 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 that canal in connection with its statutory functions.

## **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 19 (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[, save as to surface water discharge which will not require the consent of the Canal & River Trust].

(3) The undertaker must not exercise the powers conferred by article 21 (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 34 (temporary use of land for carrying out the authorised development), article 35 (temporary use of land for maintaining the authorised development) or 39 (felling or lopping of trees and removal of hedgerows in respect of the waterway unless such exercise is with the consent of the Canal & River Trust.

(5) Article 6(a) 6(b) and 6[(f)](i) [(limits of deviation)] shall not apply in relation to 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 24 (compulsory acquisition of land), article 26 (compulsory acquisition of rights), 31 (acquisition of subsoil or airspace only) or 36 (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 including a dip-survey to measure the depth of the waterway ("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 works.

(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 works 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 works; 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 works or the method of their construction.

(3) The reasonable costs of the survey must 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 will 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 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 [ ] 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 [ ] 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) 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.

(4) 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 (3) 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.

(5) 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<sup>1</sup> and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways;
- (c) amendments or alterations to the CEMP (as may be approved pursuant to paragraph 5 of Part 1 of Schedule 2) in respect of a specified work or a protective work or otherwise in connection therewith

## 7. Notice of works

(1) The undertaker must give to the engineer 30 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 [XX (*approval of plans etc*)] and paragraph [YY (*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 19 (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 [*insert footnote*<sup>2</sup>] 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

<sup>1</sup> 1995 c. i.

<sup>2</sup> 1968 c. 73. Sections 105(1) and (2) were amended by paragraph 39 of Schedule 2 to S.I. 2012/1659

account of any survey issued pursuant to paragraph [XX (*survey of waterway*)] and any other information agreed between them pursuant to this Part.

#### **9. Prevention of pollution**

(1) 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. Maintenance of works**

If at any time after the completion of a specified work or a protective work, not being a work vested in the Canal & River Trust, the Canal & River 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.

#### **13. 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 [XX (*approval of plans etc*)](3)(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.

#### **14. 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; and subject to sub-paragraph (4) 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) 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 Canal & River Trust, its officers, servants, contractors or agents.

(5) 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.

#### **15. 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 48 (arbitration) of this Order.

#### **16. 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.