
CAMBRIDGE WASTE WATER TREATMENT PLANT
Response to the Examining Authority's written questions and
request for information (ExQ1) – November 2023

on behalf of the Conservators of the River Cam

Planning Inspectorate Reference: WW010003

hcr
hewitsons



1. INTRODUCTION

- 1.1. This document has been produced by Harrison Clark Rickerbys Limited trading as HCR Hewitsons on behalf of the Conservators of the River Cam (“**the Conservators**”). It sets out in the table at **Appendix 1** the response of the Conservators to the Examining Authority’s written questions and requests for information (ExQ1). The draft DCO with the Conservators’ amendments together with a table setting out what is agreed and disagreed with the Applicant is at **Appendix 2**.

HCR HEWITSONS

November 2023

Appendix 1

ExQ1	Question	Response of the Conservators
1.14	<p>Other Projects and Proposals</p> <p>Are there any other projects that are not documented in the ES that are relevant and need to be considered by the ExA? If so, please identify these projects and the public information source(s) from which you have made your assessment that they are relevant.</p>	<p>The Conservators wish to raise their bank revetment works which may be relevant for consideration of the ExA. Such works are required for the health and safety and stability reasons in the area. Conservators have annual revetment work planned for 50 meters each year. Other reasons may require more extensive works in the area (ie. along Halingway/towpath opposite outfall). These works are carried out between January to April each year.</p>
7.14	<p>Temporary disruption to the River Cam navigation</p> <p>Noting Table 2-7 (page 33 of ES Chapter 11 [AS-028]), para 3.1.30, para 4.2.22, para 4.2.25 and para 4.2.29:</p> <p>a) Whilst the number of university rowers might decrease during the summer university break, is there an increase in the use of the river by other parties during this time?</p> <p>b) If peak usage occurs from March to early November and the duration of construction is likely to be four months, is it possible or desirable for these works to take place from November to March?</p> <p>c) If so, how would this affect the magnitude of the impact? Would it reduce from 'significant'?</p>	<p>During the summer university break there is a limited increase in pleasure cruisers and holiday rental craft. The quietest period as to activities on the river is during August and September.</p> <p>The Conservators in discussion with the Applicant have agreed that August would be the preferred period for the initial setup works for project. Such works having the greatest impact on the river. It understood from the Applicant that under such timetable the outfall works should then be completed and out by December of the same year. This is in principle agreeable to the Conservators.</p>

<p>7.15</p>	<p>Effects on the River Cam</p> <p>You expressed concern [RR-023] that this project would affect your ability of the to adequately fulfil your statutory responsibilities of navigation for this stretch of water during construction and that both the short-term and long-term consequences of the project may negatively impact the river, its banks, its ecology and the navigation of its users.</p> <p>a) What are the statutory duties that would be affected?</p> <p>b) What would be the effects on the statutory duties during the construction phase?</p> <p>c) What would be the effects on the statutory duties during the operational phase?</p> <p>d) What would be the consequences of not being able to fulfil your duties in whole or in part?</p>	<p>There are four (4) primary unresolved issues of concern to the Conservators as to how the project impacts the river.</p> <p>The first issue is the extent for which navigation rights will be extinguished. There is no clear drawing indicating the extent. There are various conflicting plans which range from a small part of the river to half of the river. The current draft DCO simply refers to ‘any part of the river Cam permanently acquired by the undertaker in connection with Work no. 32’. The land plans and the works plans for the outfall show no clear defined area so as to accurately determine the proposed extinguished navigation rights and the resultant impact to the Conservators and users of the river.</p> <p>The extent of the navigation rights is fundamental to the Conservators as the navigation authority. Likewise it is of public interest. Accordingly, the impact to, and any loss of, the navigation rights should be determined carefully within a clearly defined for which all interested parties can understand and comment upon. Until this is done the Conservators cannot assess the impact of the extinguishment of navigation rights and therefore maintains a standing objection to the proposed extinguishment.</p>
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The second issue is the lack of consultation and advance notice to the Conservators both during and after construction. The requested changes to the draft DCO (as discussed at 8.20 below and attached to this statement) include provision for improved consultation and advance notice to ensure it can manage users of the river and maintain unobstructed navigation. The changes also provide powers of the Conservators to have a constructive input into timing and parameters of works (especially during the post construction period) such as to minimise disruption and danger to users of the river. The Conservators also request that they are consultee in Requirement 10.

It is important to note that an outfall at a high pressure release may cause significant health and safety risk to river users and their craft. It could create damage to opposite bank and revetments. Boaters who may moor intentionally or in ignorance, causing an obstruction to the wider navigation will affect statutory duties. The proposed changes to the draft DCO are intended to address such concerns.

The third issue is that the Conservators are not put to any expense resultant from the project. This includes the cost of removing silting caused by the outfall. The proposed changes to the draft DCO are intended to address such concerns.

The fourth issue is a concern that the suspension of statutory provisions and the temporary suspension of navigation rights will leave a potential vacuum in authority to deal with an obstructed river when users will not be able to pass in vessels. By example, moored vessels (deliberate/ignorance) creating obstruction effecting the wider navigation rights. There is concern that there may be an issue of protesters, mooring vessels/creating barriers to the work pontoons both on the river and Halingway/towpath. The Conservators consider that the Applicant should take on enforcement responsibilities to ensure that obstruction to the river is prevented with any vessels removed. Accordingly, the Conservators suggest removal of vessel powers should be included in the DCO and are in ongoing discussions with the Applicant as to such powers.

Finally, as to the powers of the Conservancy as relevant to the above, an brief example of the legislative provisions is the 1996 Byelaws which:

- a) 3 - Control of Traffic on the River.
- b) 4.2 - Appropriate usage of River eg: allowing flow of passage either side of the river.
- c) 6.1- 6.11 - all matters related to moored vessels.
- d) 7.1 - 7.3: Consideration to Regattas, Races and Similar Events.
Locks - To ensure that no debris/vessel used in the construction becomes an obstruction to use of the lock down stream (Baits

		<p>Bite).</p> <ul style="list-style-type: none"> e) 11.1 - 12.4: Prohibition against abandonment & Prohibition on obstruction (loss of enforcement rights to avoid navigational obstruction. f) 13.3: Enjoyment; g) 13.4: Obstruction caused by debris; h) 13.5: Limiting Free Navigation. i) 15.6: consent for diving; j) 15.7: allow sewage etc into the river. Maintaining navigability of the river - could be impacted by debris, will be impacted by obstruction into the river (approx. half width); the removal of statutory enforcement rights etc.
8.20	<p>The BoR [AS-145] includes several Statutory Undertakers with interests in land and equipment that would be affected by CA / TP. The Applicant:</p> <ul style="list-style-type: none"> a) Provide a progress report on negotiations with each of the Statutory Undertakers listed in the BoR, with an estimate of the timescale for securing agreement with them; b) Indicate whether there are any envisaged impediments to the securing of such agreements; and c) State whether any additional Statutory Undertakers have been 	<p>Please see attached draft DCO with the Conservators preferred wording tracked together with the table setting out the current position on what has been agreed and what hasn't been agreed with the Applicant. The Conservators and the Applicant are continuing discussions on the areas not agreed, and will update the examining authority as that progresses.</p>

	<p>identified since the submission of the BoR with the application.</p> <p>To Statutory Undertakers (and others subject to protective provisions): Where Statutory Undertakers (and others subject to protective provisions) have concerns regarding the current drafting of the Protective Provisions within the dDCO [AS-139], either provide copies of preferred wording or if you have provided it, signpost where it can be found and explain why you do not consider the wording as currently drafted to be appropriate.</p>	
9.2	<p>Design review</p> <p>Please comment on the desirability of implementing a Design Review Panel to provide an informed ‘critical friend’ on the developing proposals, to ensure that good quality sustainable design and integration of the Proposed Development into the landscape is achieved in the detailed design, construction and operation of the project.</p>	<p>The Conservators consider that a Design Review Panel is a useful proposal. The Conservators consider it beneficial for them to be either represented on the Design Review Panel or consulted by such panel.</p>
10.16	<p>R10 – should the construction outfall management and monitoring plan (R10(1)) and the operational outfall management plan (R10(4)) make provision for consultation with any other bodies, such as the Environment Agency, Natural England and the Conservators of the River Cam (noting NE’s RR [RR-015])?</p>	<p>The Conservators consider that Requirement 10 should provide that they are a statutory consultee on the construction outfall management and monitoring plan and the operational outfall management plan as well as any subsequent amendments to such plans. The Conservators have made representations to the Applicant in this regard.</p>

		<p>As navigation authority it has statutory duties in relation to the use of the river and its maintenance. A major concern of the Conservators is the silting of the river by the outfall. Being a consultee on these plans will ensure the Conservators have direct input into such issue and other matters affecting the river during and post construction.</p>
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Appendix 2

Topic area	Extract from the Conservators' Letter	CWWTPR response	Conservators response
Draft SoCG	<p>What is understood to be the current version of the draft SoCG may very much be described as an early version. It is appreciated that the intention is to update the draft as the scheme moves through the examination stage for the development consent order. It is therefore considered too early for substantive beneficial and constructive discussion on its drafting. Notwithstanding, and without prejudice to its final approval, the Conservators have no immediate comments nor concerns on the current version within the aforementioned context.</p> <p>It is however kindly noted as a few initial minor comments that the watercourse would preferably be referred to as the 'River Cam' and not the 'river Cam' (and this comment applies equally to the draft Protective Provisions), and there will also need to be a correction to the date of the Byelaws.</p>	<p>The Conservators' acknowledgement is appreciated as is the intention to engage to develop further. It would be helpful if the Conservators could confirm the process for approval of the SoCG and if this can be delegated outside of quarterly Board meetings.</p> <p>For the purposes of the DCO, reference to the 'River Cam' must be 'river Cam'. As the DCO is a statutory instrument, it must comply with the SI template from legislation.gov.uk and drafting convention. The river is not officially 'named' and therefore it would not be appropriate to refer to it as such.</p> <p>In relation to the date of the byelaws, we note that there is reference to the River Cam Byelaws 1966 in the draft DCO which should be to the River Cam Byelaws 1996. This will be amended in the next version of the DCO.</p>	<p>The drafting convention for the 'river Cam' is agreed.</p> <p>The amendment to the River Cam Byelaws 1996 is agreed</p> <p>The Conservators agree that delegation can be requested for a smaller working group who can respond by email where Board meetings are not possible.</p> <p>It is envisaged, as previously proposed, that a meeting between such working group and the representatives of the Applicant (likely with the parties respective legal representatives) would be beneficial to discuss remaining issues.</p>
Draft Protective Provisions	<p>There are several preliminary matters which we wish to mention before commenting on the draft Protective Provisions. Firstly, the purpose of this initial response on behalf of the Conservators is not to propose alternatives or amendments to the draft Protective Provisions but to identify issues of concern in the current draft for further discussion based on the parties' mutual endeavours of</p>	<p>The points raised here are addressed in the covering email.</p>	<p>As a general comment it should be appreciated that it is not the role nor obligation of the Conservators to draft the development consent order or even to propose drafting provisions.</p> <p>The Conservators have identified the issues for which they have concerns or</p>

	<p>hopefully resolving such concerns in a final agreed version. Although some example draft provisions have been provided below it is expected that your client will provide updated drafting as part of such further discussion.</p> <p>Secondly, this response is not intended, nor should be taken, as a statement of the Conservators' position on the principle of the scheme. The referenced plans in the draft Protective Provisions are noted without comment for the purposes of this response as to whether such plans are acceptable to the Conservators.</p> <p>Thirdly, and to avoid any wasted costs, drafting cross-references have not been addressed in this response and will be considered only upon review of the final version of the draft Protective Provisions.</p> <p>Finally, it should be noted that we have now exceeded the costs undertaking provided by you in relation to the Conservators' consideration and response to the draft SoCG and draft Protective Provisions. The costs undertaking will need to be increased to enable the aforementioned further discussion. We can discuss such costs uplift by separate correspondence.</p> <p>There are two separate parts to the draft Protective Provisions which are directly related to the Conservators. These are: (1) Rights on the River Cam; and (2) Protections for the navigation authority. I have set out the Conservators' position to each part below in such order (with paragraph numbering for ease of reference in further discussions).</p>		<p>oppose, and it is for the Applicant to propose alternative drafting to resolve such concerns and opposition. Criticism of the Conservators for such approach is wholly misplaced.</p> <p>Finally, it is more reasonable and proportionate for the Conservators to first explain its substantial concerns on the drafting before assisting the Applicant with proposed amended drafting. If the Conservators conversely first proposed amended drafting for which the principle of the issues are not agreed then likely the Applicant will just complain about those costs instead.</p>
Paragraph 1.1	1. Rights on the River Cam	For the avoidance of doubt, we note that paragraphs 1.1 to 1.10 of the letter	

	<p>1.1 The first and key part of these provisions are paragraphs 1(1)(a) to 1(3) which provides: “1.—(1) Notwithstanding the licences which may have been granted pursuant to section 5 or 16 of the River Cam Conservancy Act 1922([1]), the undertaker may for the purposes of the construction, operation, use and maintenance of the authorised development—</p> <p>(a) temporarily suspend any rights of navigation or any other rights over the parts of the river Cam identified with blue hatching on sheet 2 of the rights of way plans (Document 4.6.2); and</p> <p>(b) permanently extinguish any rights of navigation or other rights on any part of the river Cam permanently acquired by the undertaker in connection with Work no. 32.</p> <p>(2) Any rights of navigation over any other parts of the river Cam may be temporarily suspended with the written consent of the relevant navigation authority as provided in paragraph 4 of Part 8 of Schedule 14 (protective provisions).</p> <p>(3) The undertaker must not exercise the powers in paragraph (1) unless it has given not less than 28 days’ notice in writing of its intention to do so to the relevant navigation authority.”</p>	<p>concern the wording in Article 44, and not the protective provisions.</p> <p>Whilst the Applicant does not consider this strictly necessary, it is content to separately set out the powers of permanent extinguishment and temporary suspension of rights in the Article and the proposed amended wording is therefore set out below:</p> <p><i>44.—(1) Notwithstanding the licences which may have been granted pursuant to section 5 or 16 of the River Cam Conservancy Act 1922(a), the undertaker may for the purposes of the construction, operation, use and maintenance of the authorised development temporarily suspend any rights of navigation or any other rights over the parts of the river Cam identified with blue hatching on sheet 2 of the rights of way plans (Document 4.6.2).</i></p> <p><i>(2) Notwithstanding the licences which may have been granted pursuant to section 5 or 16 of the River Cam Conservancy Act 1922(a), the undertaker may for the purposes of the construction, operation, use and maintenance of the authorised development permanently extinguish any rights of navigation or other rights on any part of the river Cam permanently acquired by the undertaker in connection with Work no. 32.</i></p> <p>A track changed version of Article 44 and the protective provisions is attached to the covering email.</p>	
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Paragraph 1.2	<p>Firstly, as a general observation, it is noted that temporary suspension of rights of navigation and permanently extinguishment of rights of navigation are included within this same provision. Temporary suspension is legally distinct from extinguishment of legal rights with each having their own separate issues and preconditions. While this is not a red line requirement of the Conservators it is suggested as preferable in such circumstances to split them into distinct and separate provisions (which is an approach seen in other DCOs).</p>	<p>As above, this change has been made in the track changed version appended to this email.</p>	<p>It should be clarified that the criticism of Article 44 is that it applies the temporary suspension and the permanent extinguishment in the same procedural way.</p> <p>It is considered better practice to wholly separate the two issues. Specifically, the temporary suspension should be dealt with collectively in the protective provisions and are preferably not in the same Article 44. Article 44 preferably should only deal with the permanent extinguishment and the procedures to effect it.</p> <p>Again, this is not a red line requirement of the Conservators but the point being made should be correctly understood.</p>
Paragraph 1.3	<p>Secondly, on the issue of temporary suspension, there is a proposed unfettered right of temporary suspension of certain parts of the River Cam save only for 28 days' advance notice. The Conservators require an obligation on Anglian Water to first consult the Conservators on the details of the proposed temporary suspension before the advance notice is served upon them. Consultation is important in ensuring minimal disruption to the Conservators and the users of the River Cam.</p>	<p>The Applicant does not agree that the Article confers an unfettered right of temporary suspension. The power is constrained in three ways:</p> <ul style="list-style-type: none"> • Firstly, the temporary suspension must be for the purposes of construction, use, operation and maintenance of the authorised development (noting that authorised development is a defined term (for ease of reference, this is: means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development (meaning of development) of the 	<p>While the Applicant's position on the 'unfettered rights' for the temporary suspension is noted, it is unfortunate that such point is the sole focus of the Applicant's response.</p> <p>The primary comment by the Conservators in paragraph 1.3 is to request consultation on the temporary suspension. It is presumed from the response that the Applicant does not agree to first consult the Conservators.</p> <p>The reference to the protective provisions is noted but re-enforces the Conservators' view that the temporary suspension in Article 44(1) should sit with all the temporary suspension rights in the protective provisions (and not split).</p>

		<p>2008 Act and any works carried out under the requirements);</p> <ul style="list-style-type: none"> • Secondly, the power only applies to the parts of the river Cam identified with blue hatching on sheet 2 of the rights of way plans (Document 4.6.2); and • Thirdly, each exercise of the powers in Article 44 requires 28 days' advance notice (albeit the Applicant is willing to change this to 42 as per the tracked changed version attached). <p>In addition, details of the construction and operation of the outfall need to be submitted and approved by the local planning authority pursuant to Requirement 10. In particular, it will be noted that the local planning authority must approve the following details:</p> <p><i>(b) details of any proposed restrictions on navigation on the river Cam during construction works;</i></p> <p><i>(c) details of proposed communication of restrictions to river users and the Cam Conservancy;</i></p> <p>Further, the provision of plans and restrictions on river traffic are secured through the protective provisions.</p>	<p>The offer to extend the notice period to 42 days is noted and agreed (NB. such change was not on the tracked version sent).</p> <p>Advance notice is however not consultation. The Conservators maintain such request as it allows its officers an opportunity to ensure, by working cooperatively with the Applicant, that safety and use of the navigation was part of any considered works/maintenance. Noting such request a proposed Article 44(5) is included in the attached updated draft DCO.</p> <p>In relation to Requirement 10 the Conservators consider that they should be consulted. The Examiner's question 10.16 of ExQ1 is noted in that regard, and for which the Conservators will seek such consultation provision for Requirements 10(1) and (3) (the detailed construction outfall management and monitoring plan) and 10(5) and (7) (the detailed operational outfall management and monitoring plan).</p>
Paragraph 1.4	Thirdly, the temporary suspension provisions are ongoing without limitation as to the suspension period and, moreover, apply indefinitely to 'use and maintenance'. The Conservators require a limit on the number of times and the duration of	It is envisaged that it would be one continuous period of temporary suspension for the construction phase.	The Applicant states in its response that the temporary suspension in Article 44(1) are envisaged as one continuous period for the construction phase.

	<p>any temporary suspension without their consent. By example, Anglian Water could be authorised to temporarily suspend such parts of the River Cam without consent on no more than 3 occasions and each occasion must not exceed 72 hours. Anything more would require the Conservators' consent (with the usual provision that it isn't unreasonably withheld or delayed, emergencies are excluded and no unreasonable conditions). Again, this is an example only. The number of occasions and maximum duration of each occasion will need to be considered between the parties as to what is fair and reasonable for this scheme.</p>	<p>Notwithstanding this, the Applicant notes that there are several restrictions on the exercise of its powers of temporary suspension, as noted above. It is therefore not correct to say that the powers are ongoing, without limitation. The Applicant does not propose to restrict these powers further by limiting the occasions and timings as proposed by the Conservators.</p>	<p>However, such article is drafted for the purposes of 'the construction, <u>operation, use and maintenance</u> of the authorised development'.</p> <p>Noting that the unfettered rights in Article 44(1) are sought by the Applicant just for the construction phase (as stated in the response), the Conservators would be agreeable to such provision with the above underlined parts deleted. The draft DCO attached has been amended accordingly.</p> <p>Any temporary suspension outside the construction phase would be subject to the procedure in the protective provisions.</p> <p>Noting the Applicant's response and reference to the construction phase it is assumed this should be agreeable.</p>
Paragraph 1.5	<p>Fourthly, there are no advance public noticing provisions on Anglian Water relating to the temporary suspension of navigation rights. The Conservators require there to be public notices of any temporary suspension on Anglian Water's website, to relevant interest parties and posted on site in a conspicuous position.</p>	<p>Drafting has been added which provides for public notification by way of the erection of a site notice and the placing of a notice in a locally circulated newspaper for two successive weeks prior to the exercise of the powers.</p>	<p>Noted. The tracked drafting appears incomplete and therefore the amendments are agreed as updated.</p>
Paragraph 1.6	<p>Fifthly, on the issue of permanent extinguishment, it is considered the current drafting is too broad and ambiguous. It currently refers to the power to 'permanently extinguish any rights of navigation or other rights'. The reference to 'other rights' is unclear and potentially far reaching without proper scrutiny. The Conservators require removal of such reference.</p>	<p>This requires Conservators to review the extent of Work No. 32.</p> <p>Reference to other rights is necessary as there may be rights over than rights of navigation over the River Cam and which are not granted by the Acts and byelaws, for example, rights relating to the mooring of vessels or to carry out works to the river.</p>	<p>The comments of the Conservators in paragraph 1.6 concern only permanent extinguishment. The Applicant's reference and reasoning in its response to extinguishment and suspension together evidences confusion of the issue (and again highlights why the procedural aspects of extinguishment and suspension are best separated).</p>

	<p>The drafting currently also refers to the area of extinguishment being 'any part of the River Cam permanently acquired by the undertaker in connection with Work no. 32'. Presumably the reference to parts acquired by Anglian Water means freehold rights but the current drafting could be interpreted more broadly. In any event absolute clarity and clear limitation as to the part of the River Cam to be extinguished is important when public rights are being lost. The Conservators require the extent of any authorised extinguishment to be clearly demarked on a plan to be referenced as the extent and limitation of the extinguishment.</p>	<p>This power is limited in relation to both permanent extinguishment and temporary suspension. Not only must the power only be used when it is for the purposes of construction, operation, use and maintenance of the authorised development but it is limited further in relation to the specified area on the rights of way plan (Document 4.6.2) (temporary suspension) and in connection with Work No. 32 (permanent extinguishment) and as shown on the works plans.</p>	<p>A major concern of the Conservators is the ambiguity around the extent of navigation rights to be extinguished. Reference to a review of 'the extent of Work No.32' merely evidences the inability of the Applicant to clearly identify the area proposed to be extinguished.</p> <p>The work plans produced by the Applicant are conflicting and wholly unclear. By example, Insert Plan 2.3 on drawing 4.3.2 Works Plans Sheet 2 Regulation 5(2)(j)' shows the outfall taking up at least half of the river. The Design Plans for the Outfall such as drawing '4.13.3 Design Plans - Outfall Outfall Layout Plan Regulation 5(2)(o)' show a much less impact on the river. The Land Plans such as drawing '4.4.2 Land Plans Sheet 2 Regulation 5(2)(i)' show a similar impact of at least half of the river.</p> <p>The extinguishment of navigation rights is a significant matter of public interest. The Applicant must clearly identify the area proposed to be extinguished.</p> <p>In understanding the area proposed the Conservators can then also take a view on the proposed extinguishment of 'other rights'.</p> <p>The Applicant is requested to clearly identify the area for permanent extinguishment by a hatched area on the plan. Such plan must be referenced in Article 44 as the limitation to the extinguishment.</p>
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Paragraph 1.7	Sixthly, as with the temporary suspension provisions, the Conservators require advance public noticing provisions for the extinguishment rights. This should include the typical local newspaper notices in two successive weeks and site notices.	As per 1.5, drafting has been added which provides for public notification on site and in a locally circulated newspaper for two successive weeks.	Noted as amended in the attached updated draft DCO.
Paragraph 1.8	Seventhly, and finally, there are some general wider suspension of navigation rights in the protective provisions which are referenced at paragraph 1(2) of the draft provisions above. We will therefore comment upon them later below (albeit we would at this stage note that we consider that as these provisions concerns navigation rights then they would more sensibly sit within these 'Rights of the River Cam' provisions as opposed to the 'Protective provisions'). •	Noted.	
Paragraph 1.9	The final part is the disapplication of the various statutory provisions as follows: “(4) The River Cam Navigation Act 1851([2]), the River Cam Conservancy Act 1922([3]) and the Cambridge City Council Act 1985([4])are disappplied in so far as their continuance is inconsistent with the construction, operation, use and maintenance of the authorised development. The Conservators of the River Cam Byelaws 1966 are disappplied in so far their continuance is inconsistent with the construction, operation, use and maintenance of the authorised development”.	This is noted and agreed.	
Paragraph 1.10	The Conservators do not have any objection or comments in principle to these provisions.	Noted.	

Draft Protective Provisions	Protections of the navigation authority		
Paragraph 2.1.	<p>The provisions commence with an introduction and definitions. It provides as follows:</p> <p>“1. For the protection of the relevant navigation authority the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the relevant navigation authority, have effect.</p> <p>2. In this Part of this Schedule— “river work” means the construction or maintenance of those parts of the authorised development which are in or over the river Cam or which require interference with the movement of river traffic on the river Cam; “temporary river work” means those river works which do not form part of the permanent works required for the operation and maintenance of the authorised development;”</p>	<p>‘River work’ and ‘temporary river work’ are separately defined as different provisions relate to each.</p> <p>In relation to ‘river work’, the undertaker must not commence any river work until it has supplied a plan detailing the design and work programme. This is to include detail of <i>temporary river work</i>.</p> <p>Further, sub-paragraph (4) provides that upon completion of any river work, <i>the temporary river work</i> must be removed, and the site of any temporary river work must be made good.</p> <p>As temporary river works will ultimately be removed, it is considered necessary to have a provision regulating this and which is separate to the permanent works.</p> <p>Notwithstanding the above, the Applicant has re-worded the definitions slightly for additional clarity. This is detailed below.</p>	
Paragraph 2.2	<p>It is noted that the definitions of ‘river work’ and ‘temporary river work’ have drafting inconsistencies. By example, ‘river works’ refers to ‘construction or maintenance’ whereas the ‘temporary river works’ refers to ‘river works’ for ‘operation and maintenance’. Likewise what river works ‘form part of the permanent works’ and</p>	<p>The Applicant defined river work and temporary work separately as different provisions relate to each, as detailed above.</p> <p>The definition of ‘river work’ was drafted as such to ensure that it captured not just the</p>	<p>The amendments to the definitions are agreed.</p>

	<p>what don't is an ambiguous line. The Conservators require improvement to these definitions.</p>	<p>physical development of the authorised development but also the powers of maintenance and operation. In maintaining the physical works, for example, there may be some interference with traffic on the river. This would make such work a 'river work', irrespective of whether the interference is temporary or not.</p> <p>However, in light of the Conservator's comments, the Applicant has re-considered this wording and proposes amended definitions as follows:</p> <p>"river work" means any works forming part of the authorised development which are in or over the river Cam or which require interference with the movement of river traffic on the river Cam;</p> <p>"temporary river work" means those river works which are temporary in nature and which do not form part of the permanent works in or over the river Cam</p>	
Paragraph 2.3	<p>The next part concerns the carrying out of the 'river works'. It provides as follows:</p> <p>"3.— (1) Save in an emergency, the undertaker will not commence any river work until—</p> <p>(a) it has supplied to the relevant navigation authority plans of that river work showing the detailed design, work programme, any temporary river works and any associated temporary or permanent interference with rights of navigation pursuant to article 44(1); and</p> <p>(b) it has provided 28 days' written notice of the intention to commence such river work.</p>	Response below	•

	<p>(2) A river work must not be constructed except in accordance with such plans as have been provided to the relevant navigation authority.</p> <p>(3) The undertaker must carry out all river work so that the movement of river traffic on the river Cam is not restricted more than is reasonably practicable in order to carry out the relevant river work.</p> <p>(4) Upon completion of any river work, the undertaker must—</p> <p>(a) remove as soon as is reasonably practicable any temporary river work and associated materials; and</p> <p>(b) make good the site of any temporary river work so as not to cause any interference with the movement of river traffic.</p> <p>(5) In carrying out any river work, the undertaker must not—</p> <p>(a) deposit in or allow to fall or be washed into the river Cam any gravel, soil or other material except to the extent permitted by this Order; or</p> <p>(b) discharge or allow to escape either directly or indirectly into the river Cam any offensive or injurious matter.”</p>		
Paragraph 2.4	Firstly, there is no definition of ‘emergency’. The Conservators would prefer that such term is defined.	The Applicant does not propose to define ‘emergency’. It is a common and accepted practice in a DCO not to define this term and the Conservators will note reference to an ‘emergency’ in the protective provisions for Eastern Power, Cadent and National Highways. The drafting provides that in an emergency (which is not defined), the Applicant may carry out works without prior notice.	As a general observation an argument based on unsupported assertions of ‘common and accepted practice’ are unhelpful. Certainly there are DCOs which defined emergency. By example, the following: “In this Part “emergency” means any circumstance existing or imminent which the undertaker considers is likely to

			<p>cause danger to— (a) any person or property, any vessel and any person using, working on, or intending to use or work on, the [river Cam]; or (b) the environment”.</p> <p>The Applicant’s consideration of this drafting would be welcomed before a final decision on this issue is taken by the Conservators.</p>
Paragraph 2.5	<p>Secondly, the main part of the river work will be the construction of the outfall pipe. We have seen examples where there are specific protective provisions relating to schemes involving the construction of outfall pipes. An example provision is as follows:</p> <p>“In constructing and operating the outfall pipe, the undertaker must comply with the following requirements—</p> <p>(a) prior to constructing the outfall pipe, the undertaker must obtain the approval of the [Conservators] to a maximum rate of discharge of surface water through the outfall pipe;</p> <p>(b) the undertaker must ensure that the approved maximum rate of discharge is not exceeded;</p> <p>(c) the headwall must comprise a recessed precast concrete unit of adequate dimensions;</p> <p>(d) all material excavated during the construction of the headwall must be removed from the watercourse;</p> <p>(e) the area around the headwall must be restored to its previous condition as soon as possible following construction of the headwall;</p>	<p>The Applicant considers the information here to largely be a matter for the Environment Agency, through its permitting process.</p> <p>The Conservators should familiarise themselves with Requirement 10, which is explained above is specific to the outfall. In particular, the Applicant must provide details for approval of the management and monitoring of the outfall forming part of Work No. 32 prior to it being brought into operational use. This makes an express reference to details of the proposal for monitoring scour and bank erosion. The relevant wording is pasted below for ease of reference:</p> <p><i>(4) The outfall forming part of Work No. 32 must not be brought into operational use until an operational outfall management and monitoring plan has been submitted to and approved by the relevant planning authority. The operational outfall management and monitoring plan must include— (a) details of proposal for monitoring scour and bank erosion; (b) potential adaptive management measures in the event of erosion arising from outfall</i></p>	<p>As noted above as to Requirement 10, the Conservators require that they are a mandatory consultee in Requirements 10(1), (3), (5) and (7).</p> <p>A key concern of the Conservators is silting of the river caused by the outfall. The liability of which in maintain the river ultimately falls on the them as the navigation authority.</p> <p>If the Conservators are a mandatory consultee under Requirements 10(1), (3), (5) and (7) and the additional expense provision and indemnity in paragraphs 7 and 8 in the attached updated draft DCO is provided then their concerns may be reasonably addressed.</p>

	<p>(f) in constructing the outfall pipe the undertaker must ensure that erosion protection sufficient to prevent scouring of the bank of the watercourse is provided beneath the outfall pipe, across the bed and extending across the far bank to the same level as the outfall pipe and to at least one metre either side of it;</p> <p>(g) no part of the outfall pipe or associated erosion protection measures is to protrude beyond the existing bank profile; and</p> <p>(h) discharge through the outfall is to consist solely of surface water runoff and must not include any treated foul water”.</p>	<p><i>operation; (c) the circumstances in which adaptive management measures will be deployed; (d) details of ditch monitoring and maintenance measures; and (e) proposals for the provision and maintenance of any biodiversity net gain comprising river units.</i></p>	
Paragraph 2.6	<p>Without prejudice to the importance of all matters raised above, the Conservators are particularly concerned about erosion protection measures to ensure the prevention of scouring of the bank of the watercourse beneath the outfall pipe and across the bed and extending across the far bank (as raised in (f) above). The Conservators require a similar provision to the example above.</p>	<p>The works which form part of the authorised development, including those in or over the river Cam or which affect the movement of river traffic have been assessed in detail and considered as part of the application. The Applicant refers the Conservators to the following parts of the Project Description chapter in the Environmental Statement which refer to such works:</p> <ul style="list-style-type: none"> • Project Description - App. Doc Ref 5.2.2 at paragraphs 2.12.1-2.12.12 • The Outfall and Design drawings at Design Plans Outfall App. Doc Ref 4.13.1-4.13.5 <p>Again, the Applicant reiterates reference to Requirement 10(4) and the need for the Applicant to provide details of the proposed management and monitoring of scour and bank erosion. The Applicant cannot bring the outfall which forms part</p>	See comments above.

		<p>of Work No. 32 into use without the approval of these details by the local planning authority.</p> <p>As per Requirement 10(5), the details may be revised following consultation with the Environment Agency and Natural England to reflect the requirements of any environmental permit, protected species licence or land drainage consent.</p>	
Paragraph 2.7	<p>Thirdly, like the temporary suspension and extinguishment provisions, there is only a 28 days' notice period for the start of the river works with no consultation. The Conservators require that these provisions are enhanced to provide better consultation and notification to the Conservators.</p>	<p>The 28-day notice period applies to the commencement of each work which falls within the definition of 'river work'. In addition and as noted above, details of the construction and operation of the outfall need to be submitted and approved by the local planning authority pursuant to Requirement 10. In particular, it will be noted that the local planning authority must approve the following details:</p> <p><i>(b) details of any proposed restrictions on navigation on the river Cam during construction works;</i></p> <p><i>(c) details of proposed communication of restrictions to river users and the Cam Conservancy;</i></p> <p>Further, the provision of plans and restrictions on river traffic are secured through the protective provisions.</p> <p>In any event, as shown in the track changes, the Applicant is willing to increase the notice period to 42 days.</p>	<p>The Conservators' comments in paragraph 2.7 concern the lack of consultation and not whether plans are provided. The provisions apply beyond the construction phase. Consultation is necessary to ensure the Conservator's proper management of the river and to avoid disputes. Again, especially on the less anticipated post construction period. It is unclear why the Applicant does not wish to consult.</p>

Paragraph 2.8	Fourthly, the Conservators require a provision whereby Anglian Water must give the Conservators advance notice (i.e.. at least 6 weeks) of when the authorised development commences. This will assist in the Conservators' management of the river.	<p>The Conservators are reminded that 28 days' notice is required for the interference with rights of navigation and that 28 days' notice is also required for any river work.</p> <p>This is a major infrastructure project and there could be a significant lag between when development is commenced (as defined in the DCO) and when works may impact the River Cam. Further, the Applicant has several Requirements (as per Schedule 2) which must be approved by the relevant local planning authority before it can construct and operate the authorised development. In particular, as per (draft) Requirement 3 (Phasing), the undertaker cannot commence work until:</p> <p><i>(1) Save for the enabling phase, the authorised development must not be commenced until a written scheme setting out the subsequent phase or phases of construction of the authorised development and the works to form part of each phase has been submitted to and approved by the relevant planning authority</i></p> <p>However, the Applicant is happy to provide 42 days' notice of the commencement of Work No.s 31 and 32, these being the works which will impact the River Cam.</p>	The amendments to allow 42 days' notice for commencement of Works No. 31 and 32 are agreed
Paragraph 2.9	Fifthly, the Conservators require provisions to be included for notice to be given to the Conservators of any intended temporary structure or apparatus to be placed over or in the river in connection with	Details of structures and apparatus already set out in Project Description and detailed outfall drawings (please see document references 4.13.1 to 4.13.5).	The Conservators' comments in paragraph 2.9 concern 'the maintenance or repair or renewal of a permanent

	<p>the maintenance or repair or renewal of a permanent structure. The Conservators should be permitted within such provisions to impose reasonable conditions.</p> <p>An example provision is:</p> <p>“(1) The undertaker must, before placing any temporary structure or apparatus over the river required in connection with the maintenance or repair or renewal of permanent river work, comply with the reasonable requirements of the relevant navigation authority, such requirements to include— (a) the undertaker providing the relevant navigation authority with 42 days’ written notice of this requirement so that the relevant navigation authority may bring these works to the attention of users of the river; and (b) receiving approval from the relevant navigation authority, but on terms that such approval must not be unreasonably withheld or delayed.</p> <p>(2) In the case of any work carried out in an emergency the undertaker is only required to give such notice to the relevant navigation authority as may be reasonably practicable in the circumstances”..</p>	<p>Any temporary structure will form part of the ‘temporary river work’ for which 28 days’ notice is required, unless it will interfere with the movement of traffic on the River Cam, in which case it will be a ‘river work’ and therefore 28 day notice is also required. Please see paragraph 3 of the protective provisions.</p>	<p>structure’. Therefore details of structures for the construction phase is irrelevant.</p> <p>The provision requested is not limited to advance notice but the right of the Conservators to impose reasonable requirements for the works. Again, this is concerned with the ongoing maintenance period post construction.</p> <p>The Conservators’ proposed amendments to address this issue is at paragraph 3 of the protective provisions in the attached updated draft DCO.</p>
Paragraph 2.10	<p>Sixthly, the Conservators require the reinstatement of damage provisions to be expanded upon with greater detail and should include the following:</p> <p>(a) A general obligation to make good any damage as soon as possible following its occurrence including any breach of paragraph 3(5) above (as opposed to just the limited obligations at completion of the river works);</p>	<p>The Applicant has amended paragraph 3(4)(b) as follows:</p> <p>(4) Upon completion of any river work, the undertaker must—</p> <p>(a) remove as soon as is reasonably practicable any temporary river work and associated materials; and</p>	<p>The Applicant’s comments primarily apply to the construction period and fails to appreciate the ongoing rights for the river works.</p> <p>The Conservators see no reason why the general obligations cannot be provided and it is curious by the Applicant wishes to avoid them.</p>

	<p>(b) Paragraph 3(4)(b) should state 'make good as soon as is reasonably practicable the site of any temporary river work so as not to cause any interference with the movement of river traffic (i.e.. to put a timeframe on works and for which works should not be assess only on the question of interference);</p> <p>(c) A general obligation that the works must be carried out without unnecessary delay;</p> <p>(d) A general obligation that the works must be carried out in such a manner as to cause as little adverse effects as is reasonably practicable to the river and not to materially adverse effect the integrity of the wall or banks of the river; and</p> <p>(e) A general obligation that Anglian Water must maintain at its expense all elements of the river works including the erosion protection measures.</p>	<p><u>(b) as soon as reasonably practicable following the removal of any temporary river work pursuant to paragraph 3(4)(a), to make good the site of any temporary river work so as not to cause any interference with the movement of river traffic.</u></p> <p>Whilst the Applicant hopes that the above will satisfy the Conservators as to its commitment to make good the site of any temporary river work, the Applicant considers that it will also be helpful for the Conservators to note the Applicant's obligation to comply with a construction method statement, a construction environmental management plan and a code of construction practice, as per the Requirements in Schedule 2. These Requirements will address the details raised by the Conservators.</p> <p>Note also the requirement which is specific to Work No. 32 (the outfall). This is a comprehensive requirement which requires details and approval of:</p> <p><i>In relation to the construction of the outfall:</i></p> <p>(a) details of ditch habitat creation, monitoring and maintenance measures; (b) details of any proposed restrictions on navigation on the river Cam during construction works; (c) details of proposed communication of restrictions to river users and the Cam Conservancy; and (d) details of public footpath diversions during construction and proposed reinstatement methods</p>	<p>The Conservators propose that paragraph 3(3) can be improved as suggested on the attached updated draft DCO.</p>
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		<p>And</p> <p><i>In relation to the operation of the outfall:</i></p> <p>(a) details of proposal for monitoring scour and bank erosion; (b) potential adaptive management measures in the event of erosion arising from outfall operation; (c) the circumstances in which adaptive management measures will be deployed; (d) details of ditch monitoring and maintenance measures; and (e) proposals for the provision and maintenance of any biodiversity net gain comprising river units.</p>	
Paragraph 2.11	<p>Seventhly, the Conservators require provisions to be included enabling the Conservators to require provisions such as fencing around the work site on or near the river for safety. An example provision is:</p> <p>“Where reasonably required to do so by the relevant navigation authority for the purpose of ensuring the safety of the river the undertaker must, to the reasonable satisfaction of the relevant navigation authority, fence off any river work or take such steps as the relevant navigation authority may reasonably require to be taken for the purpose of separating any river work from the river, whether on a temporary or permanent basis or both.”</p>	<p>The Conservators are referred to the Code of Construction Practice Parts A and B (document references 5.4.2.1 and 5.4.2.1, secured by Requirement 8)</p>	<p>The proposed provisions concern the enforcement of safety for users of the river. The Conservators must have powers to address safety risks arising from the works if necessary. Such provisions are included at paragraph 6 of the protective provisions in the attached updated draft DCO.</p>
Paragraph 2.12	<p>Eighthly, the Conservators require provisions to be included for baseline surveys for benchmarking the condition of the River Cam pre and post completion of the scheme and then yearly to assist in the assessment and remedy of any damage to the River Cam. This relates to the concern of damage to the river bank and bed from</p>	<p>The condition of the river is a matter for the Environment Agency. In addition to the requirements of the Environmental Permit, a Flood Risk Assessment is to be agreed with the Environment Agency which will cover any impact to River Cam.</p>	<p>It is considered that this issue may be addressed through the requested consultee provisions discussed above for Requirement 10.</p>

	<p>the outfall pipe as discussed in paragraph 2.6 above. An example provision is:</p> <p>"1.—(1) Prior to commencement of the river works, a baseline hydrographic survey will be undertaken by the undertaker. This survey will form the basis for comparison with future surveys described within this paragraph. The results of the survey will be shared with the relevant navigation authority and must form the baseline of future assessments and/or surveys carried out under this paragraph.</p> <p>(2) Following commencement of construction of the river works the undertaker must carry out further assessments and surveys of the area of the river under and in the vicinity of the authorised development (and other such reasonable area notified to the undertaker by the relevant navigation authority) in accordance with the following requirements—</p> <p>(a) during the period from commencement of the works in the river until the date occurring one year after substantial completion of the works surveys are to be carried out 4 times per calendar year at such times within the year as the relevant navigation authority reasonably directs;</p> <p>(b) during the period from the date occurring one year after substantial completion of the works until the date occurring three years after substantial completion of the works surveys are to be carried out 2 times per calendar year at such times within the year as the relevant navigation authority reasonably directs;</p> <p>(c) surveys shall be carried out once per calendar year, at such time as the relevant navigation authority reasonably directs, during the period commencing with the date of expiry of the period referred to in paragraph (b) and ending on the</p>		
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	<p>date the river works are removed from the River Cam;</p> <p>(e) should a survey carried out during construction show any discernible change has occurred to the river bed levels, localised sediment sampling will be undertaken in the area of change to determine the composition of the material, hydrodynamic modelling will be undertaken to assess the extent to which the new bridge construction activity may have contributed to the change and a detailed report prepared;</p> <p>(f) should a survey carried out after construction show either a sudden large change to the river bed level or, over time, that a longer-term trend of change in level pattern has occurred, localised sediment sampling will be undertaken in the affected area to determine the composition of the material, hydrodynamic modelling will be undertaken to assess the extent to which the new bridge construction activity may have contributed to the change and a detailed report prepared;</p> <p>(g) the extent of the surveys carried out under this paragraph will be 200 metres upstream and downstream of the centre line of the new bridge covering the full width of the river over this length; and</p> <p>(h) all hydrographic surveys mentioned in this paragraph will be undertaken using a suitable multibeam echo-sounder, in accordance with the International Hydrographic Organization Standards for Hydrographic Surveys 5th Edition (February 2008) to Survey Order 1a.</p> <p>2.—(1) In the event that the further surveys or assessment carried out under paragraph 1(2) disclose that the works have resulted in part of the river becoming silted up or subject to scouring</p>		
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	<p>to the extent that there is, or is likely to be, a materially adverse impact on either the safety or efficiency of navigation of the river or the condition of the works, then the undertaker must dredge the river (or carry out such alternative remedial works as the relevant navigation authority, acting reasonably, approves) to remove the silting or make good the scouring as soon as reasonably practicable to the reasonable satisfaction of relevant navigation authority and at no expense to the relevant navigation authority.</p> <p>(2) Where the undertaker is obliged to carry out dredging or remedial works under subparagraph (1), the relevant navigation authority may instead (at its discretion) carry out such dredging or works on the undertaker's behalf if the undertaker so requests and on condition that the undertaker will meet all reasonable costs of the relevant navigation authority"</p>		
Paragraph 2.13	<p>Ninthly, the Conservators require a provision for Anglian Water to indemnify the Conservators from any losses, expenses and costs arising from the river works. An example provision is:</p> <p>"(1) Subject to the provisions of this paragraph, the undertaker agrees to indemnify fully and hold harmless the relevant navigation authority from and against all charges, claims, demands, damages, expenses, liabilities, losses, third party liabilities and any other cost and expense of any nature or kind whatsoever (including any reasonable and proper legal and other professional costs incurred by the relevant navigation authority) (together, "losses") suffered or reasonably incurred by the relevant navigation authority to the extent that any losses are caused by—</p>	<p>This indemnity is very wide reaching and the Conservators have not given any indication of the types of losses it anticipates could be suffered as a result of the river works. The Applicant has therefore proposed the indemnity wording as set out below. If any amendments are required, these will need to be justified.</p> <p>"(1) Subject to the provisions of this paragraph, the undertaker agrees to indemnify the relevant navigation authority from and against such—charges, claims, demands, damages, expenses, liabilities and losses, (together, "losses") suffered or reasonably incurred by the relevant navigation authority <u>during the construction period of the river works to</u></p>	<p>This proposed indemnity is acceptable save that the text underlined must be removed. Such underlined part is partly inconsistent with the causation of the losses listed and there is no need to limit the period for the losses for the construction period.</p>

	<p>(a) the construction, maintenance or failure of the authorised development and the river works; or</p> <p>(b) any act or omission of the undertaker or of its officers, employees, servants, contractors or agents whilst engaged in—</p> <p>(i) the construction or maintenance of the authorised development or the river works; or (ii) seeking to remedy any failure of the authorised development or the river work.</p> <p>(2) The relevant navigation authority must mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under sub-paragraph (1).</p> <p>(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any losses referred to in that sub-paragraph to the extent that they are—</p> <p>(a) attributable to the negligence or wilful misconduct of the relevant navigation authority or of its officers, employees, servants, contractors or agents; or</p> <p>(b) not within the reasonable control of the undertaker.</p> <p>(4) The relevant navigation authority must give to the undertaker notice in writing of any losses for which the undertaker may be liable under this paragraph and no settlement or compromise of them may be made without the written consent of the undertaker.”</p>	<p>the extent that any losses are directly caused by—</p> <p>(a) the construction, maintenance or failure of a river works or a temporary river work; or</p> <p>(b) any act or omission of the undertaker or of its officers, employees, servants, contractors or agents whilst engaged in—</p> <p>(i) the construction of the river work or a temporary river work; or (ii) seeking to remedy any failure of the river work or a temporary river work.</p> <p>(2) The relevant navigation authority must mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under sub-paragraph (1) and must, if requested by the undertaker, provide an explanation of how any claim under the indemnity in sub-paragraph (1) has been mitigated .</p> <p>(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any losses referred to in that sub-paragraph to the extent that they are—</p> <p>(a) attributable to the negligence or wilful misconduct of the relevant navigation authority or of its officers, employees, servants, contractors or agents; or</p> <p>(b) not within the reasonable control of the undertaker or of its officers, employees, servants, contractors or agents.</p> <p>(4) The relevant navigation authority must give to the undertaker notice in writing of</p>	
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		any losses for which the undertaker may be liable under this paragraph as soon as reasonably possible and no settlement or compromise of them may be made without the prior written consent of the undertaker which, if it notifies the relevant navigation authority that it desires to do so, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand provided that no settlement or compromise of any such claim or demand shall be made without the consent of the relevant navigation authority (which shall not be unreasonably withheld). If consent is not given by the undertaker, the relevant navigation authority shall diligently defend such claim or demand."	
Paragraph 2.14	Tently, and finally, the Conservators consider it may be beneficial for there to be included some removal of vessel powers.	The Applicant does not anticipate any practical issues as a result of the mooring of vessels. If the Conservators have a concern, please explain in order that it may be considered further.	Though enforcement powers to remove vessels may not be required, in the absence of the Conservators having rights of removal/dispersal, any vessel mooring illegally (either unwittingly or intentionally) to the perimeter of the works area may cause obstruction to the navigation, in particular during the construction of the outflow, along the proposed pontoons, which will already cause a narrowing to the navigating area. Additionally, once work is completed, the current proposal is to extinguishment of the navigation (and enforcement rights/responsibilities). Accordingly, the Conservators wish for the Applicant to further consider this issue.
Paragraph 2.15	Additional temporary suspension rights to those specifically granted above under the provisions	Please see below.	

	<p>for 'Rights on the River Cam' are then provided. As previously mentioned, our preference is that these should sit with the 'Rights' provision section and not within the protective provisions section. The provisions state as follows:</p> <p>"4.— (1) The undertaker must provide for the approval of the relevant navigation authority together with the plans provided pursuant to paragraph 3(1)(a) details of the extent of any temporary suspension of rights of navigation required pursuant to article 44(2) in order to carry out the relevant river work and the undertaker must not interfere with any rights of navigation pursuant to article 44(2) except in accordance with this paragraph.</p> <p>(2) The relevant navigation authority must respond in writing within 28 days of the request for consent under sub-paragraph (1) to either give consent to the details as submitted or suggest amendments to the details provided, but any such amendment must not materially affect or delay the efficient delivery of the relevant river work.</p> <p>(3) If the relevant navigation authority provides pursuant to sub-paragraph (2) any suggested amendments to the details provided, the undertaker must within 14 days confirm whether those amendments are accepted and in the event the undertaker agrees to the amendments, the undertaker must carry out the relevant river work in accordance with those amendments. In the event the undertaker does not agree to the amendments, the relevant river work is to be undertaken in accordance the originally submitted details.</p> <p>(4) If the relevant navigation authority fails to respond to the undertaker's request for consent</p>		
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	pursuant to this paragraph 4 within 28 days, consent is deemed to have been given.”		
Paragraph 2.16	<p>These provisions are ineffectual from the perspective of the Conservators. They are initially framed as the Conservators’ consent but, per subparagraph (3), if Anglian Water doesn’t agree with the Conservators’ consent refusal, then they can proceed as they propose. Likewise, there are deemed consent provisions if no response is given within 28 days. In practical effect these are more like consultation provisions. The Conservators require that these provisions are amended as ‘true’ consent provisions with the usual emergency rights and that consent shall not be delayed or unreasonably withheld nor unreasonable conditions imposed.</p>	<p>Deemed consent only applies in the event that the Conservators fail to respond. It is therefore in the Conservators’ power to prevent deemed consent applying by acknowledging and responding to the Applicant’s request for consent.</p> <p>Deemed consent is required for all protective provisions and has been justified in the Explanatory Memorandum at paragraph 6.1.5 as follows:</p> <p><i>The Order includes several provisions for deemed consents/approvals. These are required in order to ensure a swift and clear mechanism to delivering the development. There are safeguarding provisions to ensure the provision of sufficient information for the giving of the relevant consent or otherwise, and where this has been done, approval is deemed so that the development may continue, and is not stalled due to the need to negotiate with third parties. This deemed approval route is appropriate for the authorised development due to its national significance and the timeframe in which the undertaker is required to deliver the development</i></p>	<p>The Applicant only addresses the deemed consent comments of the Conservators. The Conservators accept such deemed consent subject to a 42 day period. It should be appreciated that the Conservators is a voluntary organisation, and therefore tight timescales are unreasonable.</p> <p>However, the Applicant has not addressed the comments on the consent provisions not needing compliance if disagreed with by the Applicant. That is not a consent. The Conservators maintain that if there is a dispute on the consent then it must be resolved by arbitration. The Applicant cannot simply ignore requirements they do not agree. Proposed wording has been added to the attached updated draft DCO.</p>
Paragraph 2.17	<p>The final part relates to disputes. It states: “5. Any difference arising between the undertaker and the relevant navigation authority under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) must be referred to and settled by</p>	<p>Please see below.</p>	

	arbitration in accordance with article 52 (arbitration)."		
Paragraph 2.18	The arbitration provisions have not been provided to us and as we understand are yet to be drafted in the current draft of the overall DCO. The Conservators make no comment upon such provisions at this time other than we can confirm that in principle dispute resolution by arbitration is acceptable to the Conservators.	The arbitration article is as per Article 52 of the draft DCO.	Noted.