

Cambridge Waste Water Treatment Plant Relocation Project
Anglian Water Services Limited

Statement of Common Ground: The Conservators of the River Cam

Application Document Reference: 7.14.13
PINS Project Reference: WW010003

Revision No.3
April 2024

Document Control

Document title Statement of Common Ground between Anglian Water Services Limited and the Conservators of the River Cam.

Version No. 3

Date Approved

Date 1st Issued October 2023

Version History

Version	Date	Author	Description of change
1	05 October 2023	-	First draft for approval following issue of Rule 6 Letter dated 19 September 2023 and submission of Relevant Representations.
2	13 November 2023	-	
3	12 April 2024		New version following update to protective provisions and further engagement between The Applicant and the the Conservators of the River Cam.

Contents

1	Introduction	1
1.1	Purpose of this document	1
1.2	Approach to the SoCG	1
1.3	Status of the SoCG	2
2	Consultation and Engagement	2
3	Documents considered in this SoCG	2
4	Summary and status of engagement	3
4.1	Draft DCO	3
4.2	Discharge point and design	4
5	Agreement on this SoCG	5
6	Appendices	0
6.1	Appendix 1	0
6.2	Appendix 2	1
6.3	Appendix 3	26

1 Introduction

1.1 Purpose of this document

- 1.1.1 This Statement of Common Ground (“SoCG”) is submitted as part of an application by Anglian Water Services Limited (“the Applicant”) for a Development Consent Order (DCO) under the Planning Act 2008 (‘the Application’).
- 1.1.2 The Application is for the provision of a new modern, low carbon waste water treatment plant for Greater Cambridge (“The Project”). The Project is an enabler of sustainable growth. The relocation of the existing works, from its current site, will unlock the last large brown field site in Greater Cambridge and allow the creation of a new city district and provide much needed housing and commercial space in a sustainable location, with access to transport, jobs and recreational opportunities.
- 1.1.3 This SoCG has been prepared by the Applicant and agreed with The Conservators of the River Cam (“The Conservancy”). The Conservancy is created and regulated by Acts of Parliament (principally the River Cam Navigation Act 1851 and the River Cam Conservancy Act 1922). It is the statutory Navigation Authority for the River Cam from Byron’s Pool (Cambridge) downriver and north to Bottisham Lock (near Waterbeach) and is empowered by the 1922 Act to make Byelaws to regulate the River.
- 1.1.4 In this SoCG, reference to ‘the parties’ means the Applicant and The Conservancy.
- 1.1.5 This SoCG has been prepared to identify matters agreed, still in discussion and matters outstanding between the Applicant and The Conservancy.

1.2 Approach to the SoCG

- 1.2.1 The SoCG will evolve as the DCO application progresses through examination. It is structured as follows
 - Section 2 confirms the pre-application consultation undertaken to date between the Applicant and The Conservancy;
 - Section 3 identifies the relevant documents on which the agreements recorded in this SoCG were reached;
 - Section 4 provides a summary of matters that have been agreed, are still in discussion and not agreed.

Agreed	indicates where the issue has been resolved and is recorded in Green and marked “ Low ”
Under Discussion	indicates where these issues or points will be the subject of on-going discussion whenever possible to resolve or refine the extent of disagreement between the parties and is recorded in Amber and marked “ medium ”

Not Agreed	indicates a final position and is recorded in Red and marked high
-------------------	---

- Section 5 includes the signatures of all parties to confirm their agreement that this SoCG is an accurate record of issues and discussions.

1.3 Status of the SoCG

- 1.3.1 This version of the SoCG represents the position between the Applicant and the Conservancy as at 12 April 2024 (covering the pre-examination and examination stage of the process).
- 1.3.2 A Principle Areas of Disagreement document on specific points between SoCG's will be updated and submitted to the Examining Authority during the examination to reflect issues that require further discussion to achieve agreement.

2 Consultation and Engagement

- 2.1.1 The Applicant has engaged with The Conservancy in its role as statutory consultee to ensure it remains able to maintain, manage and regulate the River Cam, in accordance with its powers during the construction and operational phases of the Project.
- 2.1.2 To date, officers of The Conservancy have provided views on draft proposals at various stages of the design development and the Protective Provisions sought by the Conservancy are in discussion with their legal representatives.
- 2.1.3 The Applicant has engaged with and continues to engage with The Conservancy officers in one-to-one meetings. A table recording the engagement that have taken place to date between the parties are set out in full in Appendix 1.
- 2.1.4 The Conservancy has legal representation and the status of the position between the Parties on the Protective Provisions within the dDCO is set out in the table at Appendix 2.
- 2.1.5 In addition, correspondence was exchanged on 10 November 2023 with The Conservancy and their legal representatives setting out the Applicant's position clarifying the points regarding the extent of the removal of navigational rights raised during the Issue Specific Hearing on 18 October 2023.

3 Documents considered in this SoCG

- 3.1.1 In reaching common ground on the matters covered in this SoCG, the parties made reference to the following documents.
- a) Draft DCO (App Doc Ref 2.1) [REP5-003] and Protective Provisions
 - b) Draft DCO Article 44 (App Doc Ref 2.1) [REP5-003]
 - c) Design Plans Outfall (App Doc Ref 4.13) [APP-027]

4 Summary and status of engagement

4.1 Draft DCO

4.1.1 A Draft DCO (App Doc Ref 2.1) [REP5-003] Article 44 and accompanying Explanatory Memorandum (App Doc Ref 2.2) [REP5-005] have been submitted as part of the Application. The protective provisions are not agreed and the protective provisions which the Applicant is including in the DCO at Deadline 7 are at Appendix 3.

Table 4.1: Details of the summary and status of agreement on the Draft DCO

Statement/document on which agreement is sought.	Status	Comments
Powers required to deliver the project and how applied for within the DCO	Medium	This is under review. The Conservancy's comments on the proposed Protective Provisions as of 13 November 2023 and the Applicant's responses are set out in Appendix 2.
Protective Provisions sought for the protection of the Conservancy	Medium	This is under review. The Conservancy's comments on the proposed Protective Provisions as of 13 November 2023 and the Applicant's responses are set out in Appendix 2.
Protective Provisions sought set out within Article 44 of the dDCO.		This is under discussion and the proposed Protective Provisions as set out in Article 44 are set out in Appendix 3.

4.2 Discharge point and design

4.2.1 The Design plans for the final effluent outfall and discharge point are submitted in support of the dDCO are set out in App Doc Ref 4.13 [APP-027] and provide further detail in the form of plans, drawings and sections necessary to describe the proposals for which the development consent is sought, showing details of the design of the outfall, external appearance, side elevations and dimensions.

Table 4.2: Details of the summary and status of agreement on Alternatives.

Statement/document on which agreement is sought.	Status	Comments
The options considered for outfall are appropriate. Preferred option is downstream of Baits Bite Loch not utilizing ditch options. The layout and design is appropriate.	Medium	<p>The Applicant and The Conservancy have discussed the outfall management plan and management and mitigation proposals for the installation of the outfall. These are considered appropriate. E mails between the parties dated 18 January 2024 and 31 January 2024.</p> <p>The Applicant has made the amendments sought to requirement 10 to include the Conservators to the approval for the management and monitoring of the outfall management plan. Approval for this plan is still in discussion with the Conservators.</p>

5 Agreement on this SoCG

This Statement of Common Ground has been jointly agreed by:

Name: Mark Malcom _____

Signature:  _____

Position: Programme Director Major Infrastructure _____

On behalf of: Anglian Water Services Limited _____

Date: 12/04/2024 _____

Name: _____

Signature: _____

Position: _____

On behalf of: The Conservancy _____

Date: _____

6 Appendices

6.1 Appendix 1

Table 6.1 Schedule/table of Engagement undertaken to date

Engagement Process	
The parties accept the need for pre-application engagement to minimise risk of abortive or unnecessary pre-application submission work or the need for additional assessment post application submission and are willing to attend Technical Working Groups when available and one to one meetings, if needed.	23 July 2021
Project Overview	
The Project is accepted in principle provided all works do not impact on the ability of the Conservancy to maintain, manage and regulate the River Cam.	23 July 2021
Final Effluent Discharge Point	23 July 2021
The options for the final effluent location id preferred downstream of Baits Bite Loch and without utilising ditch options.	
Methods of construction of the outfall discussed with Officers, the riverbank protection sought and working areas. Rip Rap preferred and there must be roped off areas within the river provided exclusion zones and maintaining some navigation	Site meeting 8 July 2022
Review of recreational proposals. No significant impact expected for regulation of the river or tow path. Recreational survey of the river users provided to Officers. Proposals for least intrusive within the calendar year for works to be undertaken, typically August-September.	Site meeting 8 July 2022
Catch up meeting to review application status and position. Applicant confirmation regarding response period for relevant representations and how The Conservancy can submit representations via the Planning Inspectorate's website.	20 June 2023
Meeting between The Conservancy's and The Applicant's representatives and their legal teams to review and discuss in full the amended Work Plans and amendments to land areas at the outfall and classification, the Protective Provisions sought by each party, the draft DCO and interpretation of Article 44 and the disapplication of navigational rights and outfall management plans.	18 January 2024
Meeting between The Conservancy's and The Applicant's legal representatives. Further full discussion between the parties on the Protective Provisions sought and remaining areas of disagreement. The Conservancy's lawyer confirmed he would take instructions on the outstanding points and respond in writing.	15 March 2024

6.2 Appendix 2

Table 6.2 The Conservancy’s comments on, and the Applicant’s responses to, the Protective Provisions as of 13 November 2023.

Topic area	Extract from the Conservators’ Letter	CWWTPR 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.</p> <p>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 Bylaws.</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>
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 hopefully</p>	<p>The points raised here are addressed in the covering email.</p>

Topic area	Extract from the Conservators' Letter	CWWTPR response
	<p>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>	
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 concern the wording

Topic area	Extract from the Conservators' Letter	CWWTPR response
	<p>1.1 The first and key part of these provisions are paragraphs 1(1)(a) to 1(3) which provides:</p>	<p>in Article 44, and not the protective provisions.</p>
	<p>“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>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>(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><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</i></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><i>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>(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><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>(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>A track changed version of Article 44 and the protective provisions is attached to the covering email.</p>

Topic area	Extract from the Conservators' Letter	CWWTPR response
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>
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 The Applicant 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 within the meaning of section 32 (meaning of development) of the 2008 Act and any works carried out under the requirements); - Secondly, the power only applies to the parts of the

Topic area	Extract from the Conservators' Letter	CWWTPR response
------------	---------------------------------------	-----------------

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 track changed version attached).

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:

(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;

Further, the provision of plans and restrictions on river traffic are secured through the protective provisions.

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 any temporary suspension	It is envisaged that it would be one continuous period of temporary suspension for the construction phase. Notwithstanding this, the Applicant notes that there are
---------------	--	--

Topic area	Extract from the Conservators' Letter	CWWTPR response
	<p>without their consent. By example, The Applicant could be authorised to temporary 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>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>Paragraph 1.5</p>	<p>Fourthly, there are no advance public noticing provisions on The Applicant relating to the temporary suspension of navigation rights. The Conservators require there to be public notices of any temporary suspension on The Applicant'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>Paragraph 1.6</p>	<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>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 The Applicant 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</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>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</p>

Topic area	Extract from the Conservators' Letter	CWWTPR response
	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.	(Document 4.6.2) (temporary suspension) and in connection with Work No. 32 (permanent extinguishment) and as shown on the works plans.
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.
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	<p>The final part is the disapplication of the various statutory provisions as follows:</p> <p>“(4) The River Cam Navigation Act 1851([2]), the River Cam Conservancy Act 1922([3]) and the Cambridge City Council Act 1985([4])are disapplied 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 disapplied in so far their continuance is inconsistent with the construction, operation, use and maintenance of the authorised development”.</p>	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 what don’t is an ambiguous line. The Conservators</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 physical development of the authorised development but also the powers of maintenance and operation. In</p>
---------------	---	--

Topic area	Extract from the Conservators' Letter	CWWTPR response
	<p>require improvement to these definitions.</p>	<p>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>
<p>Paragraph 2.3</p>	<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>	<p>Response below</p>

Topic area	Extract from the Conservators' Letter	CWWTPR response
	<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	<p>Firstly, there is no definition of ‘emergency’. The Conservators would prefer that such term is defined.</p>	<p>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</p>

Topic area	Extract from the Conservators' Letter	CWWTPR response
------------	---------------------------------------	-----------------

Applicant may carry out works without prior notice.

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>(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</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 as 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 operation; (c) the circumstances in which adaptive management measures will be deployed; (d) details of ditch monitoring and maintenance</i></p>
---------------	--	--

Topic area	Extract from the Conservators' Letter	CWWTPR response
	<p>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>measures; and (e) proposals for the provision and maintenance of any biodiversity net gain comprising river units.</i></p>
<p>Paragraph 2.6</p>	<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 of Work No. 32 into use without the approval of</p>

Topic area	Extract from the Conservators' Letter	CWWTPR response
------------	---------------------------------------	-----------------

these details by the local planning authority.

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.

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 note 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>
---------------	---	---

Topic area	Extract from the Conservators' Letter	CWWTPR response
Paragraph 2.8	Fourthly, the Conservators require a provision whereby The Applicant 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>
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	Details of structures and apparatus already set out in Project Description and detailed outfall drawings (please see

Topic area	Extract from the Conservators' Letter	CWWTPR response
	<p>river in connection with 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>document references 4.13.1 to 4.13.5).</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>Paragraph 2.10</p>	<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><u>(b)as soon as reasonably practicable following the removal</u></p>

Topic area	Extract from the Conservators' Letter	CWWTPR response
	<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><u>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>(c) A general obligation that the works must be carried out without unnecessary delay;</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,</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>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>(e) A general obligation that The Applicant must maintain at its expense all elements of the river works including the erosion protection measures.</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</p>

Topic area	Extract from the Conservators' Letter	CWWTPR response
		<p>Conservancy; and (d) details of public footpath diversions during construction and proposed reinstatement methods</p> <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>	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)
Paragraph 2.12	Eighthly, the Conservators require provisions to be included for baseline	The condition of the river is a matter for the Environment

Topic area	Extract from the Conservators' Letter	CWWTPR response
	<p>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 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</p>	<p>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>

be carried out 2 times per calendar year at such times within the year as the relevant navigation authority reasonably directs;

(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 date the river works are removed from the River Cam;

(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;

(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;

(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

Topic area	Extract from the Conservators' Letter	CWWTPR response
------------	---------------------------------------	-----------------

(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.

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 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.

(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"

Paragraph 2.13	Ninthly, the Conservators require a provision for The Applicant to indemnify the Conservators from any losses, expenses and costs arising from the river works. An example provision is:	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
----------------	--	--

Topic area	Extract from the Conservators' Letter	CWWTPR response
	<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>(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</p> <p>(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,</p>	<p>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 during the construction period of the river works to 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</p> <p>(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>

Topic area	Extract from the Conservators' Letter	CWWTPR response
	<p>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>(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 willful 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 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</p>

Topic area	Extract from the Conservators' Letter	CWWTPR response
		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.
Paragraph 2.15	Additional temporary suspension rights to those specifically granted above under the provisions 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: “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. (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.	Please see below.

Topic area	Extract from the Conservators' Letter	CWWTPR response
	<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 pursuant to this paragraph 4 within 28 days, consent is deemed to have been given."</p>	
<p>Paragraph 2.16</p>	<p>These provisions are ineffectual from the perspective of the Conservators. They are initially framed as the Conservators' consent but, per subparagraph (3), if The Applicant 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,</i></p>

Topic area	Extract from the Conservators' Letter	CWWTPR response
		<p><i>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>Paragraph 2.17</p>	<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 arbitration in accordance with article 52 (arbitration).”</p>	<p>Please see below.</p>
<p>Paragraph 2.18</p>	<p>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.</p>	<p>The arbitration article is as per Article 52 of the draft DCO.</p>

6.3 Appendix 3 – Protective Provisions within the DCO

6.3.1 Rights on the river Cam

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).

(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.

(3) 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 15 (protective provisions).

(4) The undertaker must not exercise the powers in paragraph (1) or (2) unless it has:

(a) given not less than 28 days' notice in writing of its intention to do so to the relevant navigation authority; and

(b) advertised its intention by way of:

a. a notice erected in reasonable proximity to the river Cam on land on which the authorised; and

b. a notice in a locally circulated newspaper for two successive weeks prior to the exercise of the powers.

(5) The River Cam Navigation Act 1851(b), the River Cam Conservancy Act 1922(c) and the Cambridge City Council Act 1985(d) are disapplied in so far as their continuance is inconsistent with the construction, operation, use and maintenance of the authorised development.

(6) The Conservators of the River Cam Byelaws 1996 are disapplied in so far as their continuance is inconsistent with the construction, operation, use and maintenance of the authorised development.

PART 7

FOR THE PROTECTION OF THE RELEVANT NAVIGATION AUTHORITY

107. 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.

108. In this Part of this Schedule—

“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;

“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.

River works

109.—(1) Save in an emergency, the undertaker will not commence any river work until—

(a) it has supplied to the relevant navigation authority plans of that river work showing the detailed design, work programme and any associated temporary or permanent interference with rights of navigation pursuant to articles 44(1) and 44(2) (rights on the river Cam); and

(b) it has provided 42 days’ written notice of the intention to commence such river work.

(2) The relevant navigation authority must provide any comments on the plans submitted pursuant to sub-paragraph (1)(a) within 28 days of receipt and the undertaker must have reasonable regard to those comments insofar as they relate to the maintenance of the safe movement of traffic on the river Cam.

(3) The undertaker must carry out all river work—

(a) in accordance with such details as have been provided to the relevant navigation authority pursuant to this paragraph 109;

(b) 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; and

(c) in compliance with the reasonable requirements of the relevant navigation authority.

(4) Upon completion of any river work, the undertaker must—

(a) remove as soon as is reasonably practicable any temporary river work and associated materials; and

(b) as soon as reasonably practicable following the removal of any temporary river work pursuant to sub-paragraph (4)(a), to make good the site of any temporary river work including any damage to walls or banks arising from undertaking the river work so as not to cause any interference with the movement of river traffic.

(5) In carrying out any river work, the undertaker must not—

(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; and

(b) discharge or allow to escape either directly or indirectly into the river Cam any offensive or injurious matter.

Details for approval

110.—(1) The undertaker must, at the same time as the provision of the plans pursuant to paragraph 109(1)(a) of this Part of this Schedule, provide for the approval of the relevant navigation authority—

- (a) details of the extent of any temporary suspension of rights of navigation required pursuant to article 44(3) in order to carry out the relevant river work and the undertaker must not interfere with any rights of navigation pursuant to article 44(3) except in accordance with this paragraph 110; and
- (b) details of any temporary or permanent signage required in connection with the river work.

(2) The relevant navigation authority must respond in writing within 42 days of the request for approval under sub-paragraph (1) to either give approval 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 and must be suggested only where the relevant navigation authority considers such amendment necessary (acting reasonably) in accordance with its functions and duties in its capacity as the relevant navigation authority.

(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 amendment, the dispute may be referred to and settled by arbitration in accordance with article 52 (arbitration) and the relevant river work is to be undertaken in accordance with the terms of the final determination.

(4) If the relevant navigation authority fails to respond to the undertaker's request for approval pursuant to this paragraph 110 within 42 days, approval is deemed to have been given.

(5) The undertaker must pay the relevant navigation authority a sum equal to the whole of any costs and expenses reasonably and properly incurred by the relevant navigation authority in relation to any approvals sought under this paragraph 110 within 30 days of written evidence of such costs and expenses.

Intention to commence Work No. 31 and Work No. 32

111. The undertaker will provide to the relevant navigation authority at least 42 days' written notice of the intention to commence Work No. 31 and Work No. 32.

Expenses

112. Any reasonable and proper additional expenses not otherwise provided for in this Part of this Schedule which the relevant navigation authority incurs in managing or maintaining the river under any powers existing at the making of this Order by reason of the

construction of any river work or temporary river work must be repaid by the undertaker to the relevant navigation authority (but subject to the submission to the undertaker, to its reasonable satisfaction, of written evidence that the additional expenses are a direct result of the construction of the river work or temporary river work and on the proviso that there will be no double recovery).

Indemnity

113.—(1) Subject to the provisions of this paragraph 113, 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 to the extent that any losses are directly caused by—

- (a) the construction of a river work or a temporary river work; or
- (b) any act or omission of the undertaker or of its officers, employees, servants, contractors or agents whilst engaged in—
 - (i) the construction or carrying out of maintenance 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.

(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.

(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—

- (a) attributable to the negligence or wilful misconduct of the relevant navigation authority or of its officers, employees, servants, contractors or agents; or
- (b) not within the reasonable control of the undertaker or of its officers, employees, servants, contractors or agents.

(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 113 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.

Disputes

114. 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 arbitration in accordance with article 52 (arbitration).

Get in touch

You can contact us by:



Emailing at info@cwwtpr.com



Calling our Freephone information line on **0808 196 1661**



Writing to us at **Freepost: CWWTPR**



Visiting our website at www.cwwtpr.com

You can view all our DCO application documents and updates on the application on The Planning Inspectorate website:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/cambridge-waste-water-treatment-plant-relocation/>