



**Canal &
River Trust**

Making life better by water

Your Ref EN010148

Our Ref IPP-229

Tuesday 4th August 2026

EN010148 Deadline 5; Canal & River Trust (interested party reference FD78D5BC9)

Comments in response to the Applicant's "Justification for the Applicant's preferred protective provisions" (Doc ref 8.23 – "PP Justification") submitted at Deadline 4

1. This representation is made by the Trust in response to the Applicant's "*Justification for the Applicant's preferred protective provisions*" (Doc ref 8.23 – "**PP Justification**") submitted at deadline 4 (21 July 2026).

The Trust

2. By way of relevant context, the Trust was incorporated and registered as a charity in 2012. The functions of British Waterways Board were transferred to the Trust by the British Waterways Board (Transfer of Functions) Order 2012 (SI 2012/1659) and by way of the Waterways Infrastructure Trust. The Waterways Infrastructure Trust is the trust settled by the Secretary of State for Environment, Food and Rural Affairs by way of a trust settlement deed dated 28 June 2012, under which the Trust holds 'the Infrastructure Property' (comprising the waterways, towpaths and associated infrastructure). The objects of the trust deed include to hold the Infrastructure Property for the public benefit, for use and enjoyment including for navigation, for walking on towpaths, for recreation in the interest of the public's health and social welfare as well as to protect and conserve the heritage interests of the Infrastructure Property and to further the conservation, protection and improvement of the natural environment and landscape of the Infrastructure Property. The Trust is a statutory undertaker for the purposes of S138 of the Planning Act 2008 and Part 11 of the Town and Country Planning Act 1990.
3. Holding and maintaining the Infrastructure Property is itself a nationally significant undertaking. In interacting with NSIP proposals, the Trust must give effect to the objects for which it holds the Infrastructure Property. Balancing the objectives of the Trust with the objectives of those promoting NSIPs through the DCO process is primarily a matter for negotiation between the Trust and the promoter through the examination process. However, where agreement cannot be reached on specific issues, it falls upon the ExA to assess the reasonableness of the parties' positions when making its recommendation, having regard to relevant guidance and to the specific considerations material to the respective positions.

The Trust's protective provisions and its experience in DCO consenting & implementation of NSIPs

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4. With over 2,000 miles of waterways under its care, the Trust has hundreds of interactions a year with developers proposing to develop under, over, adjacent or near to its undertaking, including tens of NSIP proposals. In light of the Trust's limited resources, the resource intensive process of the DCO pre-application stage and examination process and the increasing numbers of NSIP proposals, the Trust has evolved, in recent years, a standard set of protective provisions. These are designed to protect the Trust's undertaking while accommodating a range of projects each with its own range of potential impacts on the Trust's undertaking. They are based on the principle that the Trust does not take on any additional liability by reason of the NSIP and they are based on protective provisions in made DCOs. The provisions encourage collaboration between the undertaker and the Trust, ensure matters are dealt with in a timely way and there is no impediment to bringing forward new, nationally significant infrastructure unless there is good reason. Having interactions with DCO undertakers governed by as standard form as possible (though recognising there may be good reasons to depart from this in some cases) assists the Trust in resourcing during the consenting process and, crucially, during the implementation of an NSIP. As an undertaker itself, the Trust understands the needs of those operating and maintaining infrastructure and that the relationships with neighbouring landowners and other undertakers is critical in the long term.
5. Engaging with the Trust at a late stage in the consenting process puts pressure on its resources. Seeking different protections for one particular NSIP for little or no practical gain is an unnecessary drain on resource for the Trust and represents additional cost for applicants.

Timings

6. By way of general comment, the Trust is concerned by the timing of the Applicant's submissions and its dealings with the Trust. In its EIA scoping response in February 2023, the Trust made the Applicant aware that it was willing to enter into a private agreement for the land or rights it needed for its project. In the Trust's response to the Applicant's statutory consultation, in May 2025, the Trust offered to provide its standard protective provisions and discuss these with the Applicant.
7. However meaningful progress has not occurred, and Heads of Terms are not yet agreed. In recent correspondence, the Applicant has anticipated that matters may not be resolved with the Trust before the end of the examination, in which case those matters will be adjudicated by the Secretary of State. The Trust considers that in consenting new infrastructure, the impact on undertakers operating and maintaining existing infrastructure is both important and relevant to decisions. The Trust requests the ExA carefully considers this in its examination of the application and recommendations to the Secretary of State, particularly in respect of the Trust's undertaking. This includes the implications for the Trust in how the ExA follows recent guidance, "*The Examining Authority will recommend a final form of any relevant protective provisions which are bespoke to the application under consideration for final decision by the Secretary of State, which may mean that departures from the relevant party's template or standard protective provisions are required.*" (paragraph 4.27, *Planning Act 2008: Guidance on preparing an application: Part 3 - Content of a Development Consent Order*, MHCLG, 3 July 2026).
8. Powers of compulsory acquisition must only be relied on powers of last resort. Their inclusion in DCOs should only be sought and granted where negotiations have failed. Paragraph 25 of the Planning Act 2008, *Guidance related to procedures for the compulsory acquisition of land*, Department for Communities and Local Government, September 2013 states, "*Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.*" The Trust is and has always been willing to enter a private agreement with the Applicant. There are benefits to both parties of a private agreement as opposed to acquiring rights by compulsion. An agreement between undertakers is a flexible, meaningful mechanism, which can include reciprocal and mutually beneficial covenants, and allow amendments and variations over time. It can put in place reciprocal arrangements for the parties to operate and maintain their respective infrastructure, and can deal with time horizons of a limited duration (noting the Applicant's project has a limited lifespan) and provide for extensions. In its consideration of the

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PP Justification Document, the ExA will be mindful that interests and rights in land are different creatures of law to powers granted by statutory instrument.

Compulsory acquisition

9. The Trust has reviewed and carefully considered the Applicant's PP Justification Document. It is apparent (see paragraph 2.1 et seq) that numerous statutory undertakers, including the Trust, maintain concerns over the approach to PPs being advanced by the Applicant with regard to the use of compulsory acquisition powers and statutory undertakers' land.
10. In the PP Justification Document, the Applicant characterises the Trust's (and other statutory undertakers') position as a "veto". That is an unfair characterisation and is not the position sought by the Trust. The Trust's position is that, prior to exercising compulsory acquisition powers conferred by the DCO, the Applicant must first obtain the Trust's consent (**not to be unreasonably withheld**) (*emphasis added*). For the reasons set out in this document, relinquishing land or rights in Infrastructure Property without comprehensive documentation, protections built into land covenants, agreement as to value and compensation, and internal / external reporting creates additional pressures on Trust resources which are disproportionate to the identified risks to the Applicant's scheme.
11. The Trust's template protective positions encourage the Applicant to engage with the Trust at an early stage and to seek to document the necessary land rights prior to taking possession. If the Trust does not act reasonably in respect of such engagement, the Applicant may exercise the compulsory acquisition powers conferred by the DCO. The Trust would not have a "veto".
12. The Applicant cites paragraphs 4.25 and 4.26 of recent government guidance in the "Planning Act 2008: Guidance on preparing an application: Part 3 - Content of a Development Consent Order" (published 3 July 2026) in support of its position (see paragraph 2.17). The Trust invites the ExA to consider and apply the guidance as a whole. In this case, the Trust's template PPs do not "simply negate" the principal provisions of the DCO, they do not confer "unfettered" approval processes, and nor could they be used by the Trust to unreasonably "frustrate the delivery" of the project.
13. Indeed, paragraph 4.26 of the Guidance clearly anticipates provisions exempting land belonging to a statutory undertaker from compulsory acquisition provisions in a DCO where the necessary rights will be obtained by agreement with the statutory undertaker concerned. As above, the Trust has indicated and maintained its willingness and preference to enter into the necessary agreements voluntarily.
14. Further, paragraph 2.17 of the PP Justification Document omits the opening sentence of paragraph 4.25 of the Guidance, which directs Applicants to *aim to agree the form of protective provisions with the relevant parties for inclusion in the draft DCO prior to submitting the application for development consent*. The Applicant did not do so in respect of this scheme. Had it done so, some of the issues in respect of which the Applicant is now seeking justification may well have been resolved without the need for submissions during the examination.
15. Finally, in its concluding paragraphs relating to the Trust's protective provisions, the PP Justification Document purports to identify a 'clear evolution in approach' and a 'clear direction of travel in recently issued guidance'. The Trust submits that neither the guidance nor the precedent decisions of the Secretary of State establish the point the Applicant seeks to rely on. Secretary of State decisions continue to be made on a case by case basis, and (for example) the recent A46 Newark Bypass Development Consent Order 2025, the Gate Burton Energy Park Order 2024, the Cottam Solar Project Order 2024, and the Tillbridge Solar Order 2025, as well as the submission draft DCO for the Keadby Next Generation Power Station Order all include the Trust's template protective provisions.
16. In its PP Justification Document, the Applicant highlights the HyNet Carbon Dioxide Pipeline Order 2024, "2.16. *The Applicant would also highlight that the Secretary of State expressly considered a "veto" provision in relation to the*

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HyNet Carbon Dioxide Pipeline Order 2024. In that case, the decision letter records “The Applicant considers that it cannot agree to restriction of the use of compulsory powers unless the voluntary land agreement is in place, citing that this would create a ransom situation and create risk to the delivery of the Proposed Development... The Secretary of State agrees with the ExA and is of the view that the PPs provide sufficient protection to CRT.”

17. The SoCG (dated 4 September 2023) agreed between the Trust and the Hynet project promoter, records,
" The Trust objects to the Compulsory Acquisition of Trust Land, this is on the basis that there is not a compelling case in the public interest for compulsory purchase powers to be acquired in the manner sought. The Trust have raised concern that such powers are intended to be used as a matter of last resort and the Applicant has failed to use reasonable efforts to voluntarily acquire the land and rights they require from the Trust. The Applicant acknowledges the response from the Trust and will continue to engage with the intention to reach voluntary agreement. This is currently being discussed under commercial negotiations with the land rights. The Applicant issued revised Heads of Terms to the Trust on 5 June 2023 and is continuing to engage with the Trust with the intention to reach a voluntary agreement. The Applicant received further feedback from the Trust on the Heads of Terms on 15 August 2023 and is currently reviewing the comments with an aim to provide a formal response by 1st September 2023. Given the timescales it is unlikely that a voluntary agreement will be in place prior to Deadline 7 however the Applicant will continue to negotiate with the Canal & River Trust to resolve the outstanding points prior to the end of examination."
18. The drilling for Hynet’s project under the canal was completed earlier this year, yet engagement by the undertaker's agents has not occurred at a pace to put in place the long lease agreed in principle by the parties and leaves the Trust in an unsatisfactorily uncertain position. The negotiation and valuation of land rights cannot sensibly or efficiently be done after the event, and to seek to do so is a waste of the Trust's time and resources
19. By granting powers of compulsory acquisition that are subject to the Trust's consent, not to be unreasonably withheld or delayed, the Secretary of State can help ensure the Applicant will, in fact, follow its stated aim (paragraph 8.3.4, document 4.1 Statement of Reasons) of acquiring the land and rights it needs by private agreement. At the same time, the Secretary of State can be confident there will be no impediment to bringing forward the Applicant's nationally significant infrastructure. By way of example, this approach was followed by the Secretary of State in making The A46 Newark Bypass Development Consent Order 2025 (SI 2025/1090).

Status of protective provisions for the Trust in the Tween Bridge Solar examination

1. In the right-hand column of the table below, the Trust explains its position in relation to the Applicant's submissions in Table 2 of its PP Justification Document (the remainder of the columns have been copied from the Applicant's document) together with rows added to describe the other remaining points not agreed between the Applicant and the Trust (save for the rows about the veto position over compulsory acquisition powers, dealt with at paragraphs 0 - 18 above.). In addition to the provisions described below, the Trust is awaiting information about a number of other points raised by the Applicant about the Trust's standard protective provisions.

Provision in dispute	Applicant's proposed amendments to CRT PPs	Applicant’s position	Trust's position
Provision 2: [Veto position over CA powers]	Not repeated here.	Not repeated here.	See above.
Provision 2: Temporary interruption to the Canal maintenance	(2) Subject to subparagraph (3) , the undertaker must not in the exercise of the powers conferred by this Order do anything which would directly result in the waterway being	The Applicant's position remains that it is appropriate to include a caveat to paragraph 2(2) to address circumstances where the Applicant needs to occupy land adjacent to a waterway in order to install cabling beneath	The nature of the works or activities for which the Applicant is seeking a carve out is not clear to the Trust. The Applicant's design parameters document (June 26

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	incapable of being used or maintained, or which would otherwise affect the safe operation of the Canal & River Trust's Network, without the consent of the Canal & River Trust. (3) The temporary occupation or use of land adjacent to the waterway, arising as a necessary consequence of carrying out the works authorised by this Order will not be treated as rendering the waterway incapable of being maintained for the purposes of paragraph (2) except where the relevant part of the authorised development is a specified work and an approval under paragraph 3(1) has not been provided by the Canal & River Trust.	it using HDD and, as a necessary consequence of those works, maintenance of that section of the waterway cannot temporarily be undertaken. In the Applicant's view, this caveat represents an appropriate and proportionate qualification to the restriction in paragraph 2(2), particularly given that an equivalent restriction does not appear in the protective provisions secured for the benefit of CRT on comparable schemes. That said, we have proposed revised wording which is intended to address this specific scenario, rather than creating a more general carve-out. The wording at the end of proposed paragraph 2(3) is intended to make clear that the restriction should not apply to the specified works themselves. The specified works remain subject to the controls in paragraph 3(1), which ensure that CRT retains an appropriate degree of oversight and control in relation to those works.	- Rev 5 -submitted at DL3, Doc. ref. 5.6.1) indicates that drilling launch reception pits will not be located within 50 metres of the bank of the canal. In addition, the parameters indicate that the cable will be buried at least 7m below the canal. The scenario now being envisaged by the Applicant (to occupy land adjacent to the waterway in order to install cabling beneath it using HDD) has not been posed previously and, so far as the Trust is aware, has not been assessed. Preventing maintenance of the Trust's undertaking should not be outwith the Trust's control. This provision is included in the A46 Newark Bypass DCO (SI 2025/ 1090).
Provision 12: Alterations to the waterway	(1) If during the construction of a specified work or a protective work or during a period of twelve (12) [DC8.1] months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a	A 12 month maintenance period is reasonable and proportionate having regard to the nature of the proposed works and the limited interface between the Scheme and the CRT waterway. This is particularly so given that the protective provisions afford CRT oversight of the design and construction of the specified works. In these circumstances, a 24 month maintenance period is considered disproportionate and unnecessary.	Given the nature of the asset, the Trust requires a period including two full winters and two full summers to assess and monitor the impact of the scheme on the canal.

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	capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions		
Provision 17: Aggregate cap of liability for capitalised sums	The aggregate cap of the undertaker's gross liability to pay capitalised sums and any other payments or liabilities under the terms of this Part of this Schedule shall be limited to £5,000,000 (five million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.	The CRT have proposed an aggregate cap on liability for capitalised sums of £100m. This is far in excess of the aggregate cap on liability to pay capitalised sums of £5 million, which was included in the protective provisions for the CRT's benefit in The West Burton Solar Project Order 2025, The Gate Burton Energy Park Order 2024, The Cottam Solar Project Order 2024, The Tillbridge Solar Order 2025. No sound justification has been provided for the figure requested. The Applicant considers that a £5 million cap, which is widely precedented, is far more proportionate than the sum proposed by the CRT.	Please note the drafting in column 2 should indicate a liability cap of £100 million (not £10 million) is being sought by the Trust. The liability caps observed in other DCOs reflect the proposed NSIP infrastructure and the surrounding environment. In the case of the solar farm DCOs cited, with proposed cable crossings under the river Trent, the environment is a navigable river, where the river bed is naturally formed. In contrast, the proposed cable crossing of Tween Bridge Solar NSIP is below a manmade canal. The crossing point is on a 10 mile 'pound' (the stretch of water between lock gates). Along this stretch, the canal is approximately 30m wide and 2.5 to 3m in depth and holds a significant amount of water. The Trust does not hold any breach modelling for this location The canal also supplies water to Keadby 2 power station (in operation) for cooling purposes. The provision of water for cooling purposes is also required for the Keadby 3 scheme, which benefits from development consent. The cap of £100m is proposed as a precautionary estimate of potential losses from any damage to the canal in this location. In the absence of detailed information such as drill profile drawings, drill diameter, settlement calculations, bore logs, RAMS, or flood modelling, the Trust is

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			not in a position to revise that cap downwards. Should RWE provide further information to the Trust, the Trust would consider that information.
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Request to the ExA

2. The Trust will continue to negotiate the protective provisions with the Applicant and will update the ExA throughout the remainder of the examination. In the event that agreement cannot be reached between the Applicant and the Trust on the core issues identified above, the Trust requests the ExA adopts the Trust's standard protective provisions in any made DCO.
3. These will help ensure the Trust's undertaking is protected and the Applicant's project can be constructed, operated, maintained and decommissioned without the Trust or its undertaking being burdened unnecessarily.

Yours Sincerely

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