~~(Canal & River Trust preferred protective provisions at 12.08.2026, following discussions with the Applicant.)~~

~~PROTECTIVE PROVISIONS~~

Text from Applicant's DCO submitted at DL5

PART 4

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

~~1.~~ Interpretation

~~(1)~~ 28.—(1) For the protection of the Canal & River Trust the following provisions of this Part of this Schedule, have effect~~,~~ unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

~~(2)~~ (2) In this Part of this Schedule—

"Code of Practice" means the Code of Practice for Works Affecting the Canal & River Trust (April 2025) or any updates or amendments thereto;

"construction~~",~~" in relation to any specified work or protective work, includes—

~~(a)~~ (a) the execution and placing of that work; and

(b) any relaying, renewal~~,~~ or maintenance of that work~~;~~~~,~~

~~(b)~~ and
"construct" and "constructed" have corresponding meanings;

"Canal & River ~~Trust's~~Trust's network" means the Canal & River ~~Trust's~~Trust's network of waterways;

"detriment" means any damage to the waterway or any other property of the Canal & River Trust caused by the ~~presence of the~~ authorised development and, without prejudice to the generality of that meaning, includes—

Commented [A1]: DIFFERENCE A

~~(a)~~ (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);

~~(b)~~ (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;

~~(c)~~ (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;

~~(d)~~ (d) the pollution of the waterway;

~~(e)~~ (e) any significant alteration in the water level of the waterway~~,~~ or significant interference with the supply of water thereto, or drainage of water therefrom; and

~~(f)~~ (f) any harm to the ecology of the waterway; and

(g) any interference with the exercise by any person of any lawful rights over Canal & River ~~Trust's~~Trust's network;

"the engineer" means a suitably qualified and experienced engineer appointed by the Canal & River Trust for the purpose in question;

"plans" includes navigational risk assessments, sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

"practical completion" means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression "practically complete" and "practically completed" is to be construed accordingly;

"protective work" means a work constructed under paragraph (5) below~~,~~ (approval of plans etc.), ~~subparagraph (~~sub-paragraph 4~~)(~~(a);

"specified work" means so much of any permanent or temporary work authorised by this Order as is in, across, under, or within 15 metres of, or may in any way affect, the waterway; and

"the waterway" means each and every part of the Stainforth & Keadby Canal within the order limits ~~(~~including~~-~~ any works, lands or premises within the order limits belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with its statutory functions).

~~(3)~~ (3) Where the Code of Practice applies to any works or matters that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply. The undertaker will identify and agree with the Canal and River Trust those parts of the Code of Practice which are not applicable to the construction of the specified works and for the avoidance of doubt the undertaker will not be required to comply with those agreed parts of the Code of Practice.

~~**2.**~~ Powers requiring the Canal & River ~~**Trust's**~~Trust's consent

~~Protective provisions for the Canal & River Trust~~

~~(1)~~ 29.—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

~~(2)~~ ~~The~~(2) Subject to sub-paragraph (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 incapable of being used or maintained, or which would otherwise affect the safe operation of the Canal & River Trust's ~~Network~~network, without the consent of the Canal & River Trust.

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(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 sub-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.

~~(3)~~ (4) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article ~~X~~20 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust.

~~(4)~~ (5) The undertaker must not exercise the powers conferred by article ~~X~~22 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal & River Trust.

~~(5) The undertaker must not exercise any power conferred by article X (temporary use of land for constructing the authorised development) or article X (temporary use of land for maintaining the authorised development) in respect of the waterway unless such exercise is with the consent of the Canal & River Trust.~~

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~~(6) The undertaker must not exercise any power conferred by article X (compulsory acquisition of land), article X (compulsory acquisition of rights), X (acquisition of subsoil) or X (statutory undertakers) in respect of the Canal & River Trust's interests in the waterway unless such exercise is with the consent of the Canal & River Trust.~~

~~(7)~~ (6) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) ~~(6~~to (5) must not be unreasonably withheld or delayed and may be given subject to reasonable terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (Requirements) to this Order.

~~3.~~ Approval of plans, protective works etc.

~~Protective provisions for the Canal & River Trust~~

~~(1)~~ 30.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms, having regard to the Canal & River Trust's Code of Practice and such further particulars available to it as the Canal & River Trust may within 15 working days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

~~(2)~~ (2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 25 working days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval, the engineer is deemed to have approved the plans as submitted.

~~(3)~~ (3) An approval of the engineer under this paragraph ~~[3]~~30 is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (2) has not been given pending the outcome of any consultation on the approval in question that the Canal & River Trust is obliged to carry out in the proper exercise of its functions, provided prior written notice of such consultation has been provided by the Canal & River Trust to the undertaker.

~~(4)~~ (4) When signifying approval of the plans the engineer may specify on land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

~~(a)~~ (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and

~~(b)~~ (b) such other requirements as may be reasonably necessary to prevent detriment~~;~~ , and such protective works must be constructed by the undertaker or by the Canal & River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

~~(5)~~ (5) The withholding of an approval of the engineer under this paragraph ~~[3]~~30 will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule ~~x~~2 (Requirements) to this Order.

~~(6)~~ (6) The undertaker must pay to the Canal & River Trust a capitalised sum representing any reasonably increased and additional cost of maintaining and, when

necessary, renewing any works, including any permanent protective works provided under sub-paragraph (4) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(7) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 working days, the Canal & River Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of,

~~(7)~~ or part of, the specified works or make such works and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

~~4.~~ Design of works

31.—(1) Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust on—

~~(1)~~ (a) the design of the specified works;

~~(2)~~ (b) the environmental effects of those works~~;~~, and must have regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways; and

~~(3)~~ (c) amendments or alterations ~~to~~ the construction environmental management plan, landscape and ecological management plan, operational environmental management plan, decommissioning environmental management plan (as may be approved pursuant to Schedule 2) in respect of a specified work or a protective work or otherwise in connection with the waterway prior to submitting the amendments or alterations to the relevant planning authority for approval under ~~Requirement (x)~~ requirement 5 (Approved details and amendments to them).

~~5.~~ Fencing

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

~~6.~~ Notice of works

33. The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River ~~Trust's~~Trust's network.

~~7.~~ Lighting

34. The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

~~8.~~ Survey of waterway

~~(~~35.~~—~~(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works, the undertaker must bear the reasonable and proper ~~cost~~costs of the carrying out, by a suitably qualified and experienced engineer (the "surveyor"), to be approved by the Canal & River Trust and the undertaker, of a survey to measure the navigational depth of the waterway and profile of the canal bed ("~~the~~ survey") of so much of the waterway and of any land which may provide support for the waterway as will or may be affected by the specified works.~~—~~

(2) The design of, and methods proposed to be used for, the survey, are to be approved by the Canal & River Trust and the undertaker.

(3) For the purposes of the survey the undertaker must—

~~(a)~~ (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for

access to the site of the specified works and to any land of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and

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

(4) Copies of the survey results must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

~~9.~~ Construction of specified works

~~(~~36.—(1) Any specified works or protective works must, when commenced, be constructed—

~~(a)~~ (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph ~~[3]~~30 (approval of plans etc) and paragraph ~~[4]~~31 (design of works) of this Part;

~~(b)~~ (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;

~~(c)~~ (c) in such manner as to cause as little detriment as is reasonably practicable;

~~(d)~~ (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;

~~(e)~~ (e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with paragraph [29(2~~[2)]~~) (Powers requiring the Canal & River Trust's consent); and

~~(f)~~ (f) in compliance with the Code of Practice (where appropriate and where consistent with the exercise of powers pursuant to this Order and for the timely, safe, economic and efficient delivery of the authorised works);

~~(2)~~ (2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968 to maintain the waterway.

~~(3)~~ (3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise

agreed between the undertaker and the Canal & River Trust and save to the extent that any deterioration to the condition of the waterway is not caused by the construction of the specified works.

~~(4)~~ (4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph ~~(8)~~35 (survey of waterway) and any other information agreed between them pursuant to this Part.

~~10.~~ Prevention of pollution

37. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein (unless otherwise permitted by the Order or the protective provisions in this Part of this Schedule) and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

~~11.~~ Access to work – provision of information

~~(~~38.—(1) The undertaker on being given reasonable notice must—

~~(a)~~ (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and

~~(b)~~ (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Canal & River Trust on being given reasonable notice must—

(a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their ~~construction; and~~

construction; and

(b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

~~12.~~ Alterations to the waterway

~~(1)~~ 39.—(1) If during ~~the~~ construction of a specified work or a protective work or during a period of ~~twenty four (~~24 twelve (12) 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

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undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

~~(2)~~ (2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

~~13.~~ Maintenance of works

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

~~14.~~ Repayment of the Canal & River ~~Trust's~~Trust's fees, etc.

~~(~~41.—(1) Save where otherwise agreed,- the undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

~~(a)~~ (a) in constructing any protective works under the provisions of paragraph ~~(2)~~30 (approval of plans etc) sub-paragraph (4)(a);

~~(b)~~ (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;

~~(c)~~ (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;

~~(d)~~ (d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and

~~(e)~~ (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

(2) If the Canal & River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal & River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 30 working days—

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

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

(3) The Canal & River Trust must take ~~in to~~into account any representations made by the undertaker in accordance with this paragraph [14]41 and must, within 15 working days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Canal & River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph [14],31, do so with a view to being reasonably economic and acting as if the Canal & River Trust were itself to fund the relevant fee, charge, cost or expense.

~~15.~~ Making good of detriment; compensation and indemnity, etc.

~~(~~42.—(1) Subject to paragraph 1542(3), if any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment.

(2) Subject to paragraph ~~15~~42(3), the undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—

~~(a)~~ (a) by reason of the construction of a specified work or a protective work or the failure of such work; or

~~(b)~~ (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work, and subject to sub-paragraph (4),

the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b).

(3) For the purposes of sub-paragraphs (1) and (2) above, the Canal and River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable~~).~~.

(4) The fact that any act or thing may have been done by the Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(5) Nothing in sub-paragraphs (1) and (2) imposes any liability on the undertaker with respect to any detriment, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

(6.) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid, and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(7.) The Canal & River Trust must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, the Canal & River Trust must provide an explanation of how the claim has been minimised.

~~16.~~ Arbitration

43.Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled) by arbitration in accordance with under article ~~X~~45 (arbitration) of this Order.

~~17.~~ Capitalised sums

44.—(1) Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

(2) 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 £~~100~~5,000,000.00 (~~one hundred~~five million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

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~~18.~~ As built drawings

45. As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Canal & River Trust as built drawings of any specified works in a form and scale to be agreed between the undertaker and the Canal & River Trust to show the position of those works in relation to the waterway.

~~19.~~ Decommissioning

46. Where the decommissioning environmental management plan identifies activities which may impact the waterway, the protective provisions in this Part ~~X~~4 of Schedule ~~X~~14 will, so far as appropriate, apply to those activities as if they were a specified work.