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### Temporary closure of, and works in, the River Ouse

54 —(1) The undertaker may, subject to Part 3 of Schedule 15 (protective provisions), in connection with the construction and maintenance of the authorised development, temporarily interfere with the relevant part of the river for the purposes of the removal, installation and maintenance of the overhead electric line .

(2) Without limitation on the powers conferred by paragraph (1) but subject to paragraphs (3) and (4) the undertaker may, in connection with the construction and maintenance of the authorised development on grounds of health and safety only, temporarily close to navigation the relevant part of the river.

(3) The power conferred by paragraphs (1) and (2) must be exercised in such a way which secures—

- (a) that no more of the relevant part of the river is closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure to navigation of the relevant part of the river becomes necessary, all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.

(4) During the period of any closure referred to in paragraph (2) all rights of navigation and other rights relating to and any obligations of the Canal & River Trust to manage the relevant part of the river so closed are to be suspended and unenforceable against the Canal & River Trust.

(5) Any person who as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private rights of navigation is entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) In this article, “the relevant part of the river” means so much of the River Ouse as is within the Order limits.

### Schedule 3, requirement 17

#### Clearance over the River Ouse

17. No part of any overhead electric line shall be installed or maintained directly above the River Ouse at a height of less than 10 metres above the mean high water level of that river.

## PART 3

### FOR THE PROTECTION OF THE CANAL & RIVER TRUST

#### Interpretation

2.—(1) For the protection of the Trust the following provisions of this part of this Schedule will have effect, unless otherwise agreed in writing between the undertaker and the Trust, for the protection of the Trust in relation to the construction of the authorised development and, within any maintenance period defined in article 39(11) (temporary use of land for maintaining the authorised development), any maintenance of any part of the authorised development.

(2) In this part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal and River Trust (April 2022~~2023~~) or any updates or amendments thereto (provided any such updates or amendments do not adversely impact the ability of the undertaker to construct and maintain the authorised development);

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

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance within a maintenance period defined in article 39(11) (temporary use of land for maintaining the authorised development); and “construct” and “constructed” have corresponding meanings;

“the Trust” means the Canal & River Trust;

“the Trust’s network” means the Trust’s network of waterways;

“detriment” means any damage to the waterway or any other property of the Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any interference with the exercise by any person of rights over the Trust’s network;

“the engineer” means an engineer appointed by the Trust for the purpose in question;

“plans” includes navigational risk assessments, plans, 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 6(5)(a);~~

“specified work” means so much of the authorised development as is ~~is~~ may be or takes place in, on, under or over the surface of land below the water level forming part of the waterway; or ~~affects~~ may affect the waterway or any function of the Trust, including any projection over the waterway by any authorised work or any plant or machinery;

“the waterway” means each and every part of the River Ouse, and includes any works, lands or premises belonging to the Trust, or under its management or control, and held or used by the Trust in connection with that river.

(3) Where the Code of Practice applies to any works or matter 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.

### Powers requiring the Trusts consent

3 (1) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 19 (discharge of water) ~~or~~ in any way interfere with the supply of water to or the drainage of water from the waterway, or carry out any specified work between the hours of 6am and 9pm, unless such exercise is with the consent of the Trust, save as to surface water discharge which will not require the consent of the Trust.

(2) The undertaker must not exercise the powers conferred by article 21 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Trust.

(3) The undertaker must not exercise the powers conferred by this Order to temporarily interfere with the waterway under article 54 (temporary closure of, and works in, the River Ouse) so as to divert or restrict any right of access to or any right of navigation along the waterway but such right of access or right of navigation may be diverted or restricted with the consent of the Trust.

(4) The undertaker must seek any consent under sub-paragraph (3) ~~[no less than 28 days XX months]~~ before such consent is required to be implemented, unless a shorter period is agreed between the undertaker and the Trust.

(5) The consent of the Trust pursuant to sub-paragraphs (1) to (3) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions.

(6) In the absence of any response from the Trust within ~~14-28~~ 14-28 days of the date the notice in sub-paragraph (4) above is provided, consent is deemed to have been given by the Trust.

### Fencing

4. Where so required by the engineer the undertaker must, to the reasonable satisfaction of the engineer, fence off a specified work ~~or a protective work~~ or take such other steps as the engineer may require to be

**Commented [CRT1]:** The Trust requires that the notice period be amended to reflect the different types of works that the Order would authorise. Shorter periods of notice would be acceptable for night-time works or day-time works that impact the passage of vessels for 1 hour or less. A longer period of notice would be required for day-time works affecting vessels for over an hour. The Trust has supplied NGET with more specific details of this and will update the Examining Authority on the proposed drafting for the Protective Provisions in due course.

**Commented [CRT2]:** The Trust is willing to accepted deemed consent on the basis that the sliding scale of notice periods that has been proposed to NGET, with longer notice for works with day time impacts, is including in the protective provisions.

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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.

#### Survey of waterway

5.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works ~~in totality~~ the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the “surveyor”), to be approved by the Trust and the undertaker (such approval not to be unreasonably withheld), of a survey (“the survey”) of so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

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

(a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and

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

(3) Copies of the survey must be provided to both the Trust and the undertaker at no cost to the Trust.

(4) The surveyor must undertake the survey required under sub-paragraph (1) in a timely manner so as to cause no ~~unreasonable~~ delay to the initial construction of any part of the specified works.

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

6.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Trust proper and sufficient plans of that work, on the Trust’s forms, having regard to the Trust’s Code of Practice and such further particulars available to it as the Trust may within 14 business 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) Subject to sub-paragraph (3), an application for approval under this paragraph is deemed to have been approved if it is neither given nor refused within 30 business days of the specified day.

(3) An approval of the engineer under this paragraph 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 Trust is obliged to carry out in the proper exercise of its functions.

(4) In this paragraph “the specified day” means, in relation to any specified works:

(a) the day on which plans and sections of that work are submitted to the Trust under sub-paragraph (1); or

(b) the day on which the undertaker provides the Trust with all further particulars of the work that have been requested by the Trust under that sub-paragraph,

whichever is the later.

~~(7)~~ In the event that the undertaker fails to complete the construction of, or part of, the specified works the Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works’ completion. If the undertaker fails to comply with this notice within 35 days, the Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

#### Lighting

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8. 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.

#### Construction of specified works

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

- (a) with all reasonable dispatch in accordance with any such plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 6 of this Part;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that any temporary obstruction or restriction or diversion of the rights of navigation have otherwise been agreed by the Trust;
- (e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 19 (discharge of water); and
- (f) in compliance with the Code of Practice.

(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 Trust is required by section 105(1)(b) and (2) (maintenance of waterways) of the Transport Act 1968 to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway, save in respect of the retention of the new permanent overhead line comprised in Work No. 6 (XC and XCP overhead electric lines, and XC overhead electric line) of Schedule 1 (authorised development), to a condition no less satisfactory than its condition immediately prior to the commencement of those works, ~~subject to any protective works~~, unless otherwise agreed between the undertaker and the Trust.

(4) In assessing whether the condition of the waterway is no less satisfactory than its condition immediately prior to the works pursuant to sub-paragraph (3), the Trust and the undertaker must take account of any survey issued pursuant to paragraph 5 and any other information agreed between them pursuant to this Part.

#### Access to work – provision of information

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

- (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Trust on being given reasonable notice must 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 Trust's reasonable costs in relation to the supply of such information.

#### Maintenance of works

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

#### Repayment of the Trust's fees, etc.

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12.—(1) The undertaker must repay to the Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Trust—

~~(a) in constructing any protective works under the provisions of paragraph 6(5)(a);~~

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

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

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

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

(2) If the Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the 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 twenty-one days—

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

(b) provide confirmation to the 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 Trust must take in to account any representations made by the undertaker in accordance with this paragraph 12 and must, within twenty-one 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) any dispute as to the fee, charge, cost or expense specified by the Trust pursuant to ~~subparagraph sub-~~paragraph (3) will be settled by arbitration in accordance with article 53 (arbitration) of this Order.

#### **Making good of detriment; compensation and indemnity, etc.**

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

(2) The undertaker must be responsible for and make good to the 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 Trust—

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

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work ~~or protective work~~;

and subject to sub-paragraph (4) the undertaker must effectively indemnify and hold harmless the Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in subparagraphs (a) and (b) (provided that the Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable) subject to a maximum sum of [●].

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(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, damage, loss or interruption to the extent that it is attributable to the act, neglect or default of the Trust, its officers, servants, contractors or agents.

(5) The 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.

**Arbitration**

14. Any difference arising between the undertaker and the Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 53 (arbitration) of this Order.

**As built drawings**

16. As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Trust as built drawings of any specified works to show the position of those works in relation to the waterway.