



**Canal &  
River Trust**

Making life better by water

National Infrastructure Planning  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

**Your Ref** EN010028

**Our Ref** IPP-171

**IP No** 20053937

**Tuesday 20 May 2025**

**Dear Sir/Madam,**

**Proposal: Application by Morgan Offshore Wind Limited and Morecambe Offshore Windfarm Limited for an Order Granting Development Consent for the Morgan and Morecambe Offshore Wind Farms Transmission Assets ("the Application")**

**Canal & River Trust (the Trust) Submission for Deadline One, (Unique Reference: 20053937).**

Further to your Rule 8 letter and following the publication of the Examining Authority's (ExA's) timetable, please find attached:

- The Trust's preferred Protective Provisions provided to the applicant on 29<sup>th</sup> January 2025 (Appendix A)

In addition, below, is an update on the Trust's latest position in relation to the examination, with headings to identify the various elements in relation to Deadline One (DL1), including update on the Trust's draft Statement of Common Ground (SOCG) with the applicant; on proposed Protective Provisions for the benefit of the Trust; and on progress made on negotiating an agreement in terms of the acquisition and/or use of land occupied by the Trust.

#### Trust's Role as an Interested Party

The Trust responded on 27<sup>th</sup> January 2025 to register and comment as an Interested Party for the Examination relating to the Morgan and Morecambe Offshore Wind Farms Transmission Assets and made Relevant Representations. The Trust provided a summary of the Relevant Representations at Deadline A, which set out our concerns raised at that stage. The Trust had registered to attend and speak at the ISH1 on 30<sup>th</sup> April and CAH1 on 2<sup>nd</sup> May, however following progress made with the applicant on the days preceding the hearings we were able to notify the ExA's that we would no longer need to attend to make oral submissions at either hearing.

#### Statement of Common Ground

At this stage negotiations have not commenced in relation to a draft SoCG with the applicant. Given progress made on addressing the Trusts concerns it may be the case that a SoCG will not be required.

#### Further Compulsory Acquisition Hearing

As explained in our relevant representation summary (submitted at Deadline A), the Trust have lease holder right on land that may be affected by the Application, namely related to Works 25A and 25B. Ahead of the CAH1 on 2<sup>nd</sup> May the applicant explained its general expectation that negotiations with leaseholders would flow from negotiations completed with freeholders. However, the applicant identified the need to engage with the Trust about its leasehold interests early and its land agents (Dalcour Maclaren) made direct contact on 29<sup>th</sup> April 2025 and advised that they would be in contact in the coming weeks to provide Head of Terms following a review of the lease. They advised that negotiations with the freeholder of the land, Tallentine Limited, had been ongoing since November 2024. On the basis of this correspondence from Dalcour

#### **Canal & River Trust Spatial Planning Team**

**E:** [planning@canalrivertrust.org.uk](mailto:planning@canalrivertrust.org.uk) **W:** [canalrivertrust.org.uk](http://canalrivertrust.org.uk) **T:** 0303 040 4040

Maclaren, the Trust were content to allow these to negotiation to progress and no longer needed to attend CAH1. We did however reserve our position to attend future CAH if required.

To date no further contact or correspondence has been received from the applicant in relation to these land negotiations. The Trust sent a chasing email on 16<sup>th</sup> May 2025 to the applicant's land agent seeking an update on when discussion may commence with the Trust. Given the current position in relation to this matter, the Trust intends, at this stage, to speak at the next Compulsory Acquisition Hearing.

The Trust will update the ExA on the progress made in relation to this matter at each relevant deadline.

#### Hearing(s)

The Trust notes that the ExA may choose to hold further Hearing(s) about specific topics that may need to be explored orally. The Trust should be available to attend these, should the ExA consider it necessary.

#### Protective Provisions for the Trust

The draft DCO, as submitted, did not contain any specific protective provisions (PP's) for the Trust as a statutory undertaker. The Trust provided the applicant its preferred protective provisions on 29<sup>th</sup> January 2025 (Appendix A). As set out in our summary Relevant Representation submitted at Deadline A, these draft protective provisions provided to the applicant are based on the DCO made for Keadby 3 (SI 2022/1396) and similar have been recently included in the Cottam (SI 2024/943) & Gate Burton (SI 2024/807) Solar NSIPs, where the proposed developments affecting the Trust's asset is an underground electricity cable.

We are pleased so advise that since then progress has been made on negotiation with the applicant on PP's for the Trust to be included within the DCO. The Trust provided an updated draft of the PPs to the applicant on 24 April 2025. The applicant in turn provided an updated version on 14<sup>th</sup> May 2025 responding to and resolving some of the comments. The Trust are currently awaiting further comments from the applicant. Whilst some matters remaining outstanding for further discussion, the parties have become more closely aligned and remain confident that these PPs can be agreed before close of the examination.

It is understood that the applicant will include PPs for the Trust in the next updated draft DCO to be submitted at Deadline 1 to reflect the progress of negotiations, though these have not been agreed by the Trust.

The Trust will update the ExA on the progress made in relation to the protective provisions and other matters at each relevant deadline.

#### Site Inspections

The Trust have no suggested locations for the ExA site inspections. The Trust do not wish to attend an accompanied site inspection.

#### Future correspondence

The Trust would welcome all future correspondence to be received electronically to the following email address:

[NationalPlanning.Function@canalrivertrust.org.uk](mailto:NationalPlanning.Function@canalrivertrust.org.uk)

Please do not hesitate to contact me with any queries you may have.


Yours sincerely,



Senior Planner – Major Projects & Infrastructure

#### **Canal & River Trust Spatial Planning Team**

E: [planning@canalrivertrust.org.uk](mailto:planning@canalrivertrust.org.uk) W: [canalrivertrust.org.uk](http://canalrivertrust.org.uk) T: 0303 040 4040



<https://canalrivertrust.org.uk/specialist-teams/planning-and-design>

**Canal & River Trust Spatial Planning Team**

**E:** [planning@canalrivertrust.org.uk](mailto:planning@canalrivertrust.org.uk) **W:** [canalrivertrust.org.uk](https://canalrivertrust.org.uk) **T:** 0303 040 4040

Patron: King Charles III. Canal & River Trust, a charitable company limited by guarantee registered in England and Wales with company number 7807276 and registered charity number 1146792, Registered office address National Waterways Museum Ellesmere Port, South Pier Road, Ellesmere Port, Cheshire CH65 4FW

(Suggested protective provision, based on the applicant's draft DCO and subject changes to draft DCO through the examination process.)

## PROTECTIVE PROVISIONS

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

#### 1. Interpretation

(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) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal & River Trust (April 2024) or any updates or amendments thereto;

“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 of that work; and “construct” and “constructed” have corresponding meanings;

“Canal & River Trust’s network” means the Canal & River 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 project 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 significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;

(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 network;

“the engineer” means an 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 3 below, (approval of plans etc.), subparagraph (4)(a);

“specified work” means so much of the authorised project as 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 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 Ribble Link within the Order limits and includes any works, lands or premises 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) Where the Code of Practice applies to any works or matters that are part of the authorised project 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.

## **2. Powers requiring the Canal & River Trust’s consent**

(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 undertaker must not exercise any power conferred by this Order to discharge water into the waterway under **article 16** (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.

(3) The undertaker must not exercise the powers conferred by **article 17** (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.

(4) The undertaker must not exercise any power conferred by **article 29** (temporary use of land for carrying out the authorised project) or **article 30** (temporary use of land for maintaining the authorised project) in respect of 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 20** (compulsory acquisition of land), **article 22** (compulsory acquisition of rights), **article 26** (acquisition of subsoil only) or **article 31** (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.

(6) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) to (5) must not be unreasonably withheld or delayed but 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 2A (Requirements – Project A) or Schedule 2B (Requirements – Project B) [or Part 2 of Schedule 15 (conditions of Marine Licence 3 or Part 2 of Schedule 16 (conditions of Marine Licence 4))]** to this Order.

(7) The undertaker must not under the powers of this Order do anything which would directly result in the waterway being incapable of being used or maintained or which would affect the safe operation of the Canal & River Trust’s network, in the Canal & River Trust’s reasonable opinion.

## **3. Approval of plans, protective works etc.**

(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 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) 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) An approval of the engineer under this paragraph 3 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) 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) 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) 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) The withholding of an approval of the engineer under this paragraph 3 will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule 2A (Requirements – Project A) or Schedule 2B (Requirements – Project B) [or Part 2 of Schedule 15 (conditions of Marine Licence 3 or Part 2 of Schedule 16 (conditions of Marine Licence 4))] to this Order.

(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, 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**

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) the design and appearance of the specified works;

(2) 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) amendments or alterations to the code of construction practice, [construction traffic management plan], ecological management plan, design principles, landscape management plan, operational drainage management plan (as may be approved pursuant to Schedule 2A or Schedule 2B) in respect of a specified work or a protective work or otherwise in connection with the waterway.

#### **5. Fencing**

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**

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 network.

#### **7. Lighting**

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**

(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 of the carrying out by a qualified 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 riverbed ("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, to be approved by the Canal & River Trust and the undertaker.

(3) 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 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 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**

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

(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)** (approval of plans etc) and **paragraph (4)** (design of works) 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 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) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with **article 16 (discharge of water)**; and

(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) 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) 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) 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) (survey of waterway)** and any other information agreed between them pursuant to this Part.

## **10. Prevention of pollution**

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**



(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 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
- (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) If during the construction of a specified work or a protective work or during a period of twenty four (24) 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 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) 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**

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 fees, etc.**

(1) 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) in constructing any protective works under the provisions of **paragraph (3)** (approval of plans etc) sub-paragraph (4)(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 Canal & River Trust's network; and

(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 14 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 account any representations made by the undertaker in accordance with this **paragraph 14** 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**, 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.**

(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 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) 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) 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 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) 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.

(4) Nothing in sub-paragraph (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.

(5) 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.

(6) 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 15 applies. If requested to do so by the undertaker, the Canal & River Trust must provide an explanation of how the claim has been minimised.

(7) The aggregate cap of the undertaker's gross liability for consequential losses shall be limited to £XX,000,000 (XX million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.]

## **16. Arbitration**

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 article 46 (arbitration) of this Order.

## **17. Capitalised sums**

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.

## **18. As built drawings**

As soon as reasonably practicable following the completion of the construction of the authorised project, 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**

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