

Representation of GTC Infrastructure Limited in
relation to the application by Cambridgeshire
County Council for the proposed Cambridge
South East Transport Order under the Transport
and Works Act 1992

Representations

GTC Infrastructure Limited ("GTC") is the leading provider of multi-utility networks in the UK. GTC forms part of BUUK Infrastructure Group which owns and operates assets under its statutory licence holder within the area where the proposed Cambridge South East Transport Order ("the Order") is located

GTC does not in principle object to the Order. However, multiple GTC assets would be affected by the Order. GTC also has easements and rights of access over land which may be affected by the construction and operation of the development under the Order. In addition GTC's assets are of a crucial nature to the local residents, services and businesses. GTC needs to ensure adequate provisions are included in the Order to protect GTC's existing and future assets, and GTC's ability to comply with its statutory obligations and duties and the welfare of the local residents and businesses.

GTC does not believe that the protective provisions of the draft Order satisfactorily protect GTC's existing and future assets and the ability to comply with its statutory duties. GTC proposes minor amendments to specific protective provisions in order to alleviate these concerns.

GTC has a set of preferred protective provisions that they would seek to agree with the Applicant and can share with the Applicant to foster discussions to reach agreement. The critical content of GTC's preferred protective provisions are detailed below by way of proposed amendments.

GTC would welcome discussions with the Applicant in relation to these representations in order to reach agreement with the Applicant on the protective provisions and negotiate a draft statement of common ground with the Applicant if deemed necessary.

Schedule 12: Protective Provisions

GTC has a few concerns about the protective provisions as currently drafted including but not limited to the following points:

Paragraph 2 Definitions

GTC considers that the definition of '*alternative apparatus*' in paragraph 2 should include the words '*and effective*' after the words '*not less efficient*'. Efficiency relates to cost and productivity, whereas effectiveness relates to ensuring the same output. In GTC's opinion, alternative apparatus could be no less efficient than the asset which it replaces i.e. it might cost the same to maintain, but may be less effective.

The definition of '*apparatus*' in paragraph 2 does not reflect all the apparatus and assets that is or could be vested in GTC, and therefore which needs to be protected under the Protective Provisions.

Paragraph 4 Apparatus in stopped up streets

Paragraph 4 relates to temporary stopping up, alteration or diversion of streets, and says that statutory undertakers will be at liberty at all times to take all necessary access across any such highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary stopping up, alteration or diversion was in that highway.

Paragraph 4 does not refer to new assets and apparatus. As a statutory undertaker GTC has the power to install relevant apparatus, under or over any street and to keep that apparatus there; to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and to carry out any works requisite for, or incidental to, the purposes of any works described above. This power applies to works in the street. GTC has the power to install relevant apparatus in any land which is not in, under or over a street and to keep that apparatus there; to inspect, maintain, adjust, repair or alter any relevant apparatus which is in such land; and to carry out any works requisite for, or incidental to, the purposes of any works described above this power applies to work in land which is not a street e.g. a stopped up street.

These statutory powers have not been disapplied by the Order and as such these provisions still have effect for the land and streets which are included within the Order land.

GTC has statutory powers and must be able to exercise these powers to install new apparatus in order to comply with its various statutory duties

GTC does not know whether it will need to install new apparatus in any Order land at this stage but needs to prevent these powers from being removed or the Order being in conflict with these.

In order for paragraph 4 to be consistent with GTC's statutory powers it should include reference to GTC's ability to install new apparatus in order to comply with its statutory obligations. GTC proposes that paragraph 4(2) should be amended to insert after 'was in that highway' the following words: *'or to install new apparatus where necessary to enable the undertaker to comply with its statutory obligations'*.

Paragraph 5 Acquisition of Land

Paragraph 5 states that the Applicant shall not acquire any apparatus otherwise than by agreement with the undertaker in question. However, it is not clear in what circumstances this clause would apply, as under the draft Order the Applicant only has a right to acquire land and rights in land. It does not have a right to acquire apparatus. In this regard, GTC proposes the following amendment to clarify that the paragraph relates in addition to the acquisition or extinguishment of land or rights in land so that paragraph 5 reads:

"Regardless of any provision in this Order or anything shown on the works and land plans, or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus otherwise than by agreement."

For the avoidance of doubt, GTC also proposes an amendment to paragraph 6(1) to clarify that GTC's entitlement to keep apparatus in land *'must not be extinguished unless and until alternative apparatus has been constructed and is in operation..'*

Paragraph 6 Removal of apparatus and Paragraph 8 Retained apparatus

Due to the procedural requirements and the nature of the benefitting parties and users of the relevant apparatus the time limits set out in paragraph 6 and 8 of the protective provisions do not allow for GTC to review, consider and consult where necessary in order to provide the information, actions or amendments required in every foreseeable situation. GTC proposes that the time limits are extended to 42 days to provide GTC with adequate and appropriate time.

Paragraph 9 and 10 Expenses and Costs

GTC would request that the expenses and costs covered by this paragraph 9 would include anticipated costs not just repayment after the expenditure has already been incurred. GTC proposes that “*reasonably anticipated or*” is added before “*incurred*” at paragraph 9(1)

GTC would also expect that an indemnity is given in relation to all costs and expenses incurred by reason or in consequence of any damage or interruption or third-party liabilities. GTC proposes that the following new subparagraph 10(1)(c) is added:

(c) indemnify the statutory undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid or recovered from the statutory undertaker, by reason or in consequence of any such damage or interruption or the statutory undertaker becoming liable to any third party as aforesaid other than arising from any default of that statutory undertaker

GTC in addition reserves the right to make further representations should any amendments be made to the Order or the scheme as it comes forward and welcomes early discussions with the Applicant.