

## **Appendix G**

### *ABP's proposed protective provisions*

#### **PART 14**

#### **FOR THE PROTECTION OF ASSOCIATED BRITISH PORTS**

**94.** In this Part of this Schedule—

“AB Ports” means Associated British Ports in its capacity as harbour authority for the Ports of Immingham and Grimsby;

“accumulation” means any accumulation of silt or other material which impedes access to or berthing at any harbour work belonging to or occupied by AB Ports within the Ports of Immingham or Grimsby;

“construction” includes execution and placing and maintenance, extension or enlargement and “construct” and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of any structure of whatever nature owned or occupied by AB Ports within the Ports of Immingham or Grimsby;

**95.** The provisions of this Part of this Schedule shall unless otherwise agreed in writing between the undertaker and AB Ports have effect for the protection of AB Ports.

**96.** (1) If—

(a) during the construction of a tidal work or within 10 years after the completion of that work and wholly or partly in consequence of its construction or,

(b) during the exercise of the powers to dredge conferred by this Order or within 10 years of the exercise of those powers and wholly or partly in consequence of the exercise of those powers, there is caused or created an accumulation or erosion, the undertaker, if so requested by AB Ports acting reasonably, shall remedy such accumulation or erosion to the extent attributable to such construction or exercise of such powers in the manner specified in sub-paragraph (3) and, if they refuse or fail so to do, AB Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the undertaker.

(2) If any accumulation or erosion in consequence of such construction or exercise of the powers to dredge arises within such period of 10 years and is remedied in accordance with sub-paragraph (3), any recurrence of such accumulation or erosion shall from time to time be so remedied by the undertaker during that period of 10 years and at any time thereafter..

(3) For the purposes of sub-paragraphs (1) and (2) above—

(a) in the case of an accumulation, the remedy shall be its removal; and

(b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works

and other protective works or measures as may be necessary.

(4) In the event that surveys, inspections, tests and sampling carried out pursuant to paragraph 99(1) of this Part of this Schedule or paragraph 15 of Part 2 of this Schedule establish that such accumulation or erosion

would have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers to dredge, the undertaker shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.

(5) For the purposes of sub-paragraph (1) above the date of completion of a work shall be the date on which it is brought into use.

**97.** In exercising the powers of the Order to construct the authorised development the undertaker shall ensure that the movement of construction vessels does not obstruct or interfere with the operation of the Ports of Immingham and Grimsby.

**98.** —(1) Before extinguishing or interfering with any existing rights for AB Ports to pass along parcels 03009, 03014 and 03016 (Station Road), the undertaker shall, with the agreement of AB Ports, create a new right of way for vehicular traffic that is reasonably convenient for AB Ports, such agreement not to be unreasonably withheld or delayed.

(2) The undertaker shall before carrying out any works or exercising the powers of article 14 in relation to the Rosper Road, the Humber Road, the A160 or the A180 consult AB Ports and shall in carrying out the works or exercising such power ensure that access to the Port of Immingham is not materially impeded.

**99.**—(1) Without prejudice to the other provisions of this Part of this Schedule, the undertaker shall be responsible for, and make good to AB Ports, all losses, costs, charges, damages and expenses however caused (including a proper proportion of the overhead charges of AB Ports) which may reasonably be incurred by or occasioned to AB Ports by reason of or arising from—

- (a) any accumulation or erosion in consequence of the construction of a tidal work or the exercise of the dredging powers of the Order,
- (b) any surveys, inspections or tests reasonably undertaken to establish whether any such accumulation or erosion is occurring or has occurred or
- (c) any obstruction or interference referred to in paragraphs 96 or 97.

(2) Without prejudice to the generality of sub-paragraph (1) of this paragraph, the undertaker shall indemnify AB Ports from and against all claims and demands arising out of, or in connection with such erosion or accumulation or obstruction or interference as is mentioned in that subparagraph.

(3) Nothing in this paragraph shall impose any liability on the undertaker to the extent that any losses, costs, charges, damages, expenses, claims or demands as is referred to in sub-paragraph (1) or (2) is attributable to negligence on the part of AB Ports or of any person in its employ or of its contractors or agents.

(4) AB Ports shall give to the undertaker notice in writing of any claim or demand for which the undertaker may be liable under this paragraph and

no settlement or compromise of any such claim or demand shall be made without the consent in writing of the undertaker.

**100.** Any difference arising between the undertaker and AB Ports under this Part of this Schedule shall be determined by arbitration as provided in article 58 (arbitration).

