

C.RO PROTECTIVE PROVISIONS

23 November 2012

Black text denotes provisions agreed by Able

Red text denotes provisions on which C.RO makes submissions/not agreed

PART 6

FOR THE PROTECTION OF C.RO PORTS (KILLINGHOLME) LTD

52. For the protection of C.RO Ports (Killingholme) Ltd the following provisions shall, unless otherwise agreed in writing between the undertaker and C.RO, have effect.

53. In this part of this Schedule

'C.RO' means C.RO Ports (Killingholme) Ltd, or such other person for the time being, who is the statutory harbour authority for the harbour authorised by the North Killingholme Haven Harbour Empowerment Order 1994 and Humber Sea Terminal (Phase III) Harbour Revision Order 2006, located upriver of the authorised development;

'CPK' means the harbour for which C.RO is the statutory harbour authority;

'CPK approach channel' means the approach channel and manoeuvring area for CPK;

'Killingholme Branch Line' means the branch railway line between Immingham and the vicinity of CPK, part of which runs through the Order Limits; and

'undertaker' includes where relevant the Harbour Authority.

54. (1)-Before:

- (a) submitting any plans and sections for any tidal work in or that may affect the CPK approach channel to the Secretary of State for approval under article 23 of this Order (tidal works not to be constructed without approval of the Secretary of State);
- (b) commencing any operation for the construction of a tidal work in or that may affect the CPK approach channel where approval of the Secretary of State under article 23 is not required;
- (c) submitting any works schedules to the Marine Management Organisation in accordance with Schedule 8 for works in or that may affect the CPK approach channel;
- (d) submitting any plans and sections for any tidal work or operation in or that may affect the CPK approach channel to the Conservancy Authority in accordance with Part 1 of Schedule 9;
- (e) submitting any written scheme or proposed alteration in the design drawings that may affect the CPK approach channel to the relevant planning authority in accordance with Schedule 11; or
- (f) commencing any operation for the maintenance of a tidal work in or that may affect the CPK approach channel,

the undertaker shall consult C.RO in accordance with the procedure set out in paragraph 54(2) below.

(2) The consultation that the undertaker shall carry out with CPK under paragraph 54(1) is as follows:

- (a) not less than 42 days prior to carrying out any activity to which paragraph 54(1) applies the undertaker shall submit to C.RO plans and sections of any tidal works or any written scheme or proposed alteration to the design drawings to which paragraph 54 applies and such further particulars as C.RO may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require; and
- (b) the undertaker shall allow C.RO a period of 28 days beginning with the date on which the information required under sub-paragraph (2)(a) has been submitted to C.RO for C.RO to respond for the purposes of consultation, or if later a further period of 28 days from when such further particulars as required by C.RO are submitted by the undertaker to C.RO.

(3) The undertaker shall have regard to any consultation response received from C.RO under paragraph 54(2) and shall forward a copy of that response as part of the material it submits to the Secretary of State or the Marine Management Organisation or the Conservancy Authority or any written scheme or proposed alteration to the design drawings that it submits to the relevant planning authority, to which paragraph 54 applies, together with a statement explaining how it has had regard to any consultation response received from C.RO under this paragraph.

54A. Any operations for the construction of any tidal work approved in accordance with this Order and to which paragraph 54 of this Part applies, shall, once commenced, be carried out by the undertaker so that C.RO shall not suffer more interference than is reasonably practicable, and C.RO shall be entitled by its officer or other appointed person at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

55. The undertaker shall not in the exercise of the powers granted by this Order interfere with any marks, lights or other navigational aids in the river relating to CPK without the agreement of C.RO, and shall ensure that access to such aids remains available during and following construction of any tidal works.

56. The undertaker shall pay to C.RO the reasonable costs incurred by C.RO of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work or the use of the authorised development, including but without limitation, paying the reasonable costs of C.RO incurred in raising the height of the IsoGWR.4 s sector light positioned in the entrance of North Killingholme Haven at CPK, in the event that activities related to the construction or operation of the authorised development obscure or obstruct the visibility of this sector light to vessels approaching CPK and in its approach channels.

57. The undertaker shall afford to C.RO such facilities as C.RO may reasonably require for the placing and maintenance on any tidal works of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

57A. The undertaker shall provide and maintain on any tidal works such fog signalling apparatus as may be reasonably required by C.RO and shall properly operate such apparatus during periods of restricted visibility for the purpose of warning vessels of the existence of the relevant works.

58. After the purpose of any temporary tidal work in or that may affect the CPK approach channel has been accomplished and after a reasonable period of notice in writing from C.RO requiring it do so, the undertaker shall with all reasonable dispatch, remove that work or any materials relating thereto which may have been placed below the level of high water by or on behalf of the undertaker and, on its failing so to do within a reasonable period after receiving such notice, C.RO may remove the same and charge the undertaker with the reasonable expense of doing so, which expense the undertaker shall repay to C.RO.

59. If any tidal work is abandoned or falls into decay and is in such a condition so as to interfere or cause reasonable apprehension that may interfere with navigation in the river so that it may affect CPK or access to CPK in any way, C.RO may by notice in writing require the undertaker either to repair or to restore the specified work, or any part of it, or to remove the work and restore

the site of that work to its condition prior to the construction of the specified work, to such an extent and to such limits as C.RO thinks proper acting reasonably.

Operating Procedures

59A. (1) The undertaker shall not allow vessels associated with the construction of the authorised development to obstruct or remain in the approach channel when vessels are arriving at, and sailing from CPK.

(2) C.RO shall provide the undertaker with a schedule of movements to which paragraph 59A(1) applies on a [weekly] basis and shall give the undertaker reasonable notice of any changes to scheduled sailings or other vessel movements of which it has informed the undertaker.

59B. (1) Before commencing harbour operations the undertaker shall consult C.RO about a statement of proposed safe operating procedures for access to and egress from the harbour, including the management arrangements for vessel movements within the approach channel to CPK, in accordance with paragraph 59B(2).

(2) The consultation that the undertaker shall carry out with CPK under paragraph 59B(1) is as follows:

- (a) not less than 42 days prior to commencing harbour operations the undertaker shall submit to C.RO the statement to which paragraph 59B(1) applies and such further particulars as C.RO may, within 14 days from the day on which plans and sections are submitted under this paragraph, reasonably require; and
- (b) the undertaker shall allow C.RO a period of 28 days beginning with the date on which the information required under sub-paragraph (2)(a) has been submitted to C.RO for C.RO to respond for the purposes of consultation, or if later a further period of 28 days from when such further particulars as required by C.RO are submitted by the undertaker to C.RO.

Dredging

59C. (1) The undertaker shall not dredge in the approach channel to CPK without prior approval.

(2) Any dredging that is carried out with C.RO's approval must be carried out in accordance with any conditions attached thereto.

(3) C.RO's approval under paragraph 59C(1) must not be unreasonably withheld or delayed and if by the end of the period of 5 days beginning with the date on which the dredging request has been supplied to C.RO, C.RO has not intimated its disapproval of the request and the grounds of its disapproval the undertaker may serve upon C.RO written notice requiring C.RO to intimate its approval or disapproval within a further period of 5 days beginning with the date upon which C.RO receives written notice from the undertaker. If by the expiry of the further period of 5 days C.RO has not intimated its approval or disapproval, C.RO shall be deemed to have approved the request as submitted.

Railway

59C. The undertaker shall not exercise any powers under this order for the purposes of acquiring any part of the Killingholme Branch Line unless and until it has entered into an agreement with C.RO for the purposes of the joint control and operation of any such part of the Killingholme Branch Line, at the absolute discretion of C.RO.

60. The undertaker shall not in the exercise of the powers conferred by this Order [unreasonably] prevent C.RO's access to the railway on the Order land in connection with the use of CPK.

61. The construction and operation of the authorised development must not cause [unreasonable] interference with or [unreasonably] prevent the free, uninterrupted and safe use by C.RO of the railway on the Order land in connection with the use of CPK.

Rosper Road

61A. The undertaker shall not in the exercise of the powers conferred by this Order unreasonably prevent C.RO's access to and use of Rosper Road.

61B. The construction and operation of the authorised development must not unreasonably interfere with or obstruct the free, uninterrupted and safe use of Rosper Road or any traffic on Rosper Road, unless an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.

Recovery of expenses

61C. (1) C.RO may recover from the undertaker any reasonable expenses howsoever caused which C.RO incur—

- (a) arising from the approval of plans and the inspection of the construction or carrying out of any tidal work;
- (b) by reason of any act or omission of the undertaker, or of any person in their employ, or of their contractors or workmen whilst engaged upon any tidal work or the construction and operation of the authorised development;
- (c) in dredging away any accumulation consequent upon the execution or maintenance of a tidal work;
- (d) in obtaining and depositing in the river such material as is necessary in the reasonable opinion of C.RO to protect C.RO's operations from the effects of scouring of the river bed consequent upon the execution or maintenance of a tidal work;
- (e) in altering any mooring in any way which in the reasonable opinion of C.RO may be rendered necessary by reason of the execution or maintenance of a tidal work;
- (f) in carrying out reasonable surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) —
 - (i) to establish the marine conditions prevailing prior to the construction of a tidal work in such area of the river as C.RO have reasonable cause to believe may subsequently be affected by any siltation, scouring or other alteration which the undertaker is liable to remedy under this paragraph; and
 - (ii) where C.RO have reasonable cause to believe that the construction of a tidal work is causing or has caused any siltation, scouring or other alteration as aforesaid;
- (g) arising from the carrying out of construction of a tidal work or the failure of a tidal work or the undertaking by C.RO of works or measures to prevent or remedy danger or impediment to navigation or damage to any property arising from such carrying out of construction, exercise or failure.

(2) Subject to paragraph 3, the undertaker shall not be required to pay any expense unless—

- (a) C.RO has given the undertaker reasonable notice that it intends to incur the expense including details of the works proposed and an estimate therefor; and
- (b) The undertaker has given its consent to C.RO incurring that expense, which may include the undertaker offering to carry out any works to which this paragraph applies with the consent of C.RO.

(3) The undertaker's approval under sub-paragraph (2)(b) must not be unreasonably withheld or delayed, and if by the end of the period of 14 days beginning with the date on which the notice has been supplied to the undertaker, the undertaker shall be deemed to have approved the request as submitted.

(4) Nothing in this paragraph 61C shall be deemed to prevent C.RO from -

(a) carrying out works to which this paragraph applies without the prior consent of the undertaker; or

(b) recovering expenses from the undertaker for any such work it has carried out;

where such works are in the reasonable opinion of C.RO urgently necessary to ensure the safe and efficient operation of CPK and C.RO shall give notice of its intention to carry out such works to the undertaker.

(5) Where C.RO has carried out works under sub-paragraph (4) it shall without undue delay submit the expenses for those works including any details of the works to the undertaker for approval and the undertaker's approval therefor shall not be unreasonably withheld.

(6) Any amount of expenditure approved by the undertaker under this paragraph shall be paid to C.RO by the undertaker within 28 days of a demand therefor.

Indemnity

61D. (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance operation or failure of the authorised development any damage is caused to any property of C.RO (including CPK) or C.RO suffers any loss including without limitation as a result of the failure by the undertaker to meet its obligations to C.RO under this Part the undertaker shall—

(a) bear and pay the cost reasonably incurred by C.RO in making good such damage; and

(b) indemnify C.RO against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it

by reason or in consequence of any such damage or the exercise by the undertaker of its powers conferred by this Order.

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of C.RO, its officers, servants, contractors or agents.

(3) C.RO shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand with such assistance from C.RO as may be reasonably necessary.

Liability

61E. C.RO shall not be liable, in the absence of negligence or breach of any duty hereunder or otherwise, for any damage or injury howsoever caused to any of the authorised works (whether temporary or permanent) resulting from the dredging operations of C.RO or the carrying out by them in the execution of their statutory powers and duties of any operations in the river or works for the improvement or maintenance thereof.

62. With the exception of any duty owed by C.RO to the undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order shall be construed as imposing upon C.RO

either directly or indirectly, any duty or liability to which C.RO would not otherwise be subject and which is enforceable by proceedings before any court.

63. Unless otherwise agreed in writing, any dispute arising between the undertaker and C.RO under this Schedule shall be determined by arbitration as provided in article 59 (arbitration).